(20,260.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 296.

ATLANTIC COAST LINE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

J. H. WHARTON, B. L. CAUGHMAN, AND JOHN H. EARLE, AS RAILROAD COMMISSIONERS OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

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1 STATE OF SOUTH CAROLINA:

In the Supreme Court.

J. H. WHARTON, B. L. CAUGHMAN, and J. H. EARLE, as Railroad Commissioners, Plaintiffs,

vs.

THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Return to Writ of Error.

I, U. R. Brooks, Clerk of the Supreme Court of S. C., by way of return to the writ of error directed to said Court by the Supreme Court of the United States in the above entitled cause, hereby transmit under my hand and seal a true copy of the record and of the assignment of errors, and of all proceedings in the case, together with true copies of all opinions filed in the case; and I certify that the record herewith transmitted is complete, containing in itself, and not by reference, all the papers, exhibits, depositions and other proceedings necessary to the hearing of said case.

Witness my hand and the seal of the Supreme Court of S. C. this 9 day of May 1906.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

2 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between J. H. Wharton, B. L. Caughman and John H. Earle, as Railroad Commissioners of the State of South Carolina, plaintiffs, and Atlantic Coast Line Railroad Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction

3 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision

was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, Atlantic Coast Line Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of April, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed to operate as a supersedeas.
BROWN,
Associate Justice of the Supreme Court of the United States.

4 UNITED STATES OF AMERICA, *ss:*

To J. H. Wharton, B. L. Caughman, and John H. Earle, as Railroad Commissioners of the State of South Carolina, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, withon 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of South Carolina wherein Atlantic Coast Line Railroad Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Henry B. Brown, Associate Justice of the Supreme Court of the United States, this 21st day of April, in the year of our Lord one thousand nine hundred and six.

H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

5 [Endorsed:] I hereby accept service of the within appeal on the part of the Att'y of the A. C. L. R. R. in the case of the R. R. Commissioners of South Carolina *vs.* The A. C. L. R. R. This the 9th day of May 1906 J. H. Wharton Chairman of the R. R. Com. for S. C.

[Endorsed:] I hereby accept service of the within appeal on the part of the Att'y of the A. C. L. R. R. in case of the R. R. Commission of South Carolina *vs.* A. C. L. R. R. Co. Witness my hand & seal the 24th Ap'l 1906. D. P. Duncan Sec. R. R. Com. S. C. [Seal Railroad Commission South Carolina.]

On this 9th day of May, in the year of our Lord one thousand nine hundred and six, personally appeared before me, the subscriber, Henry E. Davis, and makes oath that he delivered a true copy of the within citation to J. H. Wharton, Chairman of the Railroad Commission for South Carolina.

HENRY E. DAVIS.

Sworn to and subscribed the 9th day of May, A. D. 1906.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk S. C. of S. C.

6 *Copy Bond.*

Know all men by these presents, That we, Atlantic Coast Line Rail Road Company as principal, and The American Surety Company of New York, as sureties, are held and firmly bound unto J. H. Wharton B. L. Caughman and John H. Earle Rail Road Commissioners of the State of South Carolina in the full and just sum of Twenty five hundred Dollars to be paid to the said J. H. Wharton B. L. Caughman and John H. Earle their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of April in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, lately at a term of the Supreme Court of the State of South Carolina in a suit depending in said Court, between J. H. Wharton B. L. Caughman and John H. Earle Rail Road Commissioners of the State of South Carolina and Atlantic Coast Line Railroad Company a judgment was rendered against the said Atlantic Coast Line Railroad Company and the said Atlantic Coast Line Rail Road Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said J. H. Wharton B. L. Caughman and John H. Earle Rail Road Commissioners of the State of South Carolina citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date hereof.

Now, the condition of the above obligation is such, That if the said Atlantic Coast Line Rail Road Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its

plea good, then the above obligation to be void; else to remain in full force and virtue.

ATLANTIC COAST LINE RAILROAD COMPANY, [SEAL.]
By P. A. WILCOX, *Its Attorney in Fact.* [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By LEONARD DAMMANN,
Resident Vice-President.

Attest: DELMOS C. STUTLER,
Resident Assistant Secretary.
J. R. KENLY,
Third Vice-President.

Sealed and delivered in presence of—
B. H. MARSHALL,
As to Signature of J. R. Kenly.
H. E. DAVIS,
As to Signature of P. A. Wilcox.

Attest: W. R. SULLIVAN, *Ass't Sec'ty.*
[SEAL.]

Approved to operate as supersedeas by—
BROWN,
Associate Justice of the Supreme Court of the United States.

7 Copy.

STATE OF SOUTH CAROLINA,:

In the Supreme Court.

J. H. WHARTON and B. L. CAUGHMAN and J. H. EARLE, as Railroad Commissioners, Plaintiffs,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Assignments of Errors.

Now comes the Atlantic Coast Line Railroad Company, the defendant in the above entitled cause, and respectfully represents that it feels aggrieved by the proceedings and judgment of the Supreme Court of South Carolina in the above entitled cause, and in connection with its petition for writ of error herein makes the following assignments of error, to-wit:

First.

That the said Supreme Court of South Carolina upon its refusal to sustain the defendant's demurrer to the complaint, denominated petition, filed as an interlocutory decree, dated March 15, 1905,

erred in holding that, the enforcement by mandamus proceedings of the order of the plaintiff, Railroad Commission of the State of South Carolina, attempted to be exercised and enforced under and by virtue of Sections 2069 and 2119 of the Code of Laws of the State of South Carolina of 1902, did not deny to defendant its day in Court on the merits of said order of the Railroad Commission, and did not thereby abridge the privileges and immunities of the defendant as a citizen of the United States, and deprive it of its property without due process of law, and deny to it the equal protection of the laws in violation of Article 14 of the Amendments, Section 1, of the Constitution of the United States.

Second.

That the said Supreme Court of South Carolina upon its
8 refusal to sustain the defendant's demurrer to the complaint, denominated petition, filed as an interlocutory decree, dated March 15, 1905, erred in holding that by virtue of Section 2069 of the Code of Laws of South Carolina of 1902, the Railroad Commission of the State of South Carolina had the legislative function, and in addition to the legislative function, the judicial function, and that the enforcement of said order of the Railroad Commission by a mandamus proceeding, which did not afford to the defendant a trial on the question of fact, or the right of inquiry as to the merits of the order, did not deny to defendant its day in Court, and did not abridge the privileges and immunities of defendant as a citizen of the United States, and did not deprive it of its property without due process of law, and did not deny to it the equal protection of the laws in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States.

Third.

That the said Supreme Court of South Carolina erred in holding in its final decree of date February 26, 1906, rendered effective April 9, 1906, that the legislative and judicial control by the Railroad Commission and the Supreme Court of the State of South Carolina of defendant's inter-state commerce trains Nos. 32 and 35 by requiring them to stop at the Town of Latta, South Carolina, was not in violation of and in conflict with Section 8, Article 1 of the Constitution of the United States, and the laws of the Congress of the United States enacted thereunder, and was not a direct burden upon inter-state commerce, and was not a direct and unnecessary interference with the right of defendant to perform its obligation as an inter-state commerce carrier of passengers, and was not a direct and unnecessary interference with the speedy carriage of the mails of the United States.

Fourth.

That the said Supreme Court of the State of South Caro-
9 lina erred in not holding in said final decree that it was beyond the power of the Railroad Commission and the Supreme

Court of the State of South Carolina to subject to local control by their orders defendant's inter-state commerce trains Nos. 32 and 35, in particulars not within the right of mere police regulations, in requiring them to stop at the Town of Latta, South Carolina, and in not holding that such an exercise of power was in violation of Section 8, Article 1 of the Constitution of the United States, and the laws of the Congress of the United States enacted thereunder, and was a direct burden upon inter-state commerce, and a direct and unnecessary interference with the right of the defendant to perform its obligations as an inter-state commerce carrier of passengers, and was a direct and unnecessary interference with the speedy carriage of the mails of the United States.

Fifth.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate local facilities otherwise were not provided by defendant Company, when it appears that the question of providing by defendant Company of adequate local facilities was not an issue in the original petition of the people of Latta to the Railroad Commission, or considered by the Railroad Commission of South Carolina, and could not therefore, be used as an excuse for the
10 violation of defendant's inter-state commerce rights.

Sixth.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate local facilities otherwise were not provided by defendant Company, when it appears that the question of defendant Company's providing adequate local facilities was not before the said Supreme Court, except by way of affirmative defence urged by defendant in its answer on the merits, and when it also appears that the Supreme

Court of South Carolina, after appointing its referree to take the testimony, refused, when this report was made to the Court and argued, to consider it, whereas a consideration of and an adjudication upon said testimony would have shown that local accommodations were adequately supplied; and further in refusing to consider the fact as to adequate local facilities, violated defendant's rights and immunities as a citizen of the United States, deprived it of its property without due process of law, and denied to it the equal protection of the laws in violation of Section 1, Article 14 of the Amendments to the Constitution of the United States.

Seventh.

That the Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the
11 Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate local facilities otherwise were not provided by defendant Company, when if this question of adequate local facilities had been contained in the petition of the people of Latta to the Railroad Commission, and had been considered by the Railroad Commission, and had been considered by the Supreme Court of South Carolina, and had become a judicially ascertained fact against defendant's contention, it could not be used as an excuse for the violation of defendant's inter-state commerce rights.

Eighth.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate local facilities otherwise were not provided by defendant Company when it should have held that if the question of the defendant's providing adequate local facilities had been considered by the Supreme Court of South Carolina and decided adversely to defendant, it could only afford the Railroad Commission and
12 the Supreme Court of the State of South Carolina the right in an inquiry directed to that end to require the Railroad

Company, defendant, to furnish additional and adequate local facilities, and could not give the right of the Railroad Commission and Supreme Court of the State of South Carolina to invade the inter-state commerce rights of the defendant as an original or alternative proposition, and said Court should have held that these local facilities could only be furnished by requiring other trains and more trains, and not require the service by including within its orders the regulation of inter-state commerce trains.

Ninth.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its right as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails that, the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate facilities otherwise were not provided by defendant Company, and that the local authorities of the State of South Carolina, including the Railroad Commission of the State of South Carolina, and the Supreme Court of the State of South Carolina have the power to regulate and control inter-state commerce trains of the character of trains Nos. 32 and 35 as they are shown to be in this controversy in regards other than mere police regulations.

Tenth.

That the said Supreme Court of the State of South Carolina
13 erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, that it is only after all local conditions have been adequately met that railway companies doing an inter-state commerce business, have the legal right to adopt special provisions for through traffic.

Eleventh.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina on the ground that ade-

quate local facilities otherwise were not provided by the defendant Company, and that the writ of mandamus should be issued, and issuing same so as to require the defendant to stop its inter-state commerce trains Nos. 32 and 35 at Latta, South Carolina, with the alternative provision to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping inter-state commerce trains Nos. 32 and 35, said alternative requirement being undefined, and being without warrant of law, is based upon a question not decided by the Court, and is without the legal quality of being used as a coercive alternative proposition to control inter-state commerce rights of the defendant.

W. G. ELLIOTT,
14 GEO. B. ELLIOTT,
WILLCOX & WILLCOX,
Defendant's Attorneys.

F. D. McKENNEY,
Of Counsel.

15 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Summons for Relief. (*Complaint Served.*)

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office in Columbia, S. C. within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated October 14th A. D. 1904.

U. X. GUNTER, JR.,
Attorney General, Plaintiffs' Attorney.

16 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

The complaint of the above named plaintiffs respectfully alleges:

I. That the said plaintiffs were at the times hereinafter stated,

and still are, the duly qualified Railroad Commissioners of the State of South Carolina.

II. That the Atlantic Coast Line Railroad Company was at the times hereinafter mentioned, and still is, a railroad corporation organized and existing under the laws of the State of South Carolina, and known by the name Atlantic Coast Line Railroad Company, and was the owner of and operating a certain railroad known as the Atlantic Coast Line Railroad, leading from the town of Wilson, through the towns of Fayetteville in the State of North Carolina, to Florence in the State of South Carolina, and operating a branch line commonly known as the Latta Branch Railroad, leading from the town of Latta in Marion County on said railroad, to the town of Clio in Marlboro County, commonly known as the Latta Branch Railroad.

III. That on June 7th, 1904, certain citizens of the State of South Carolina residing at Latta and along the line of the said Latta Branch Railroad filed a petition with the said plaintiffs as Railroad
17 Commissioners of the State of South Carolina, alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers travelling on said railroad, and asking that the said Railroad Company be compelled to stop its passenger trains, Numbers 32 and 35, at its station in the town of Latta when flagged for the purpose of receiving and delivering passengers at said station.

IV. That thereafter, on July 29th, 1904, the said Railroad Commissioners of the State of South Carolina, after investigating the facts stated in said petition, and after notice to and hearing the said above named defendant in reference to the facts of said petition, found as a matter of fact that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta by the Atlantic Coast Line Railroad Company at its station in Latta, South Carolina, and said Railroad Commissioners thereupon made an order that the said passenger trains Numbers 32 and 35, operated by the said Atlantic Coast Line Railroad Company, should stop when flagged at the said Latta station on and after August 1st, 1904.

V. That a copy of said order of the Railroad Commissioners was served upon the Atlantic Coast Line Railroad Company more than sixty days prior to the commencement of this action, but that the said Railroad Company has neglected and refused to comply with the said order to stop said trains at said station for the purpose of receiving and delivering passengers.

VI. That on October 7th, 1904, the said Railroad Commissioners of the State of South Carolina requested the Attorney General of the State of South Carolina to commence this action on their behalf to compel the said Railroad Company to comply with
18 said order; and to stop said trains, Numbers 32 and 35, on flag at the station in Latta for the purpose of receiving and discharging passengers on said trains.

Wherefore, the plaintiffs pray that a writ of mandamus do issue to require compliance with the said order of the said Commissioners.

U. X. GUNTER, JR.,
Attorney General, Plaintiff's Attorney.

STATE OF SOUTH CAROLINA, *Richland County:*

Personally appeared B. L. Caughman, who being duly sworn says that he is one of the plaintiffs in the above entitled action and that the foregoing complaint is true of his own knowledge.

B. L. CAUGHMAN.

Sworn to before me this 14th day of October, 1904.

D. H. MEANS,
Notary Public, S. C.

19 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

On hearing read the verified complaint in the above entitled action, and on motion of U. X. Gunter, Jr., Esq., Attorney General for the plaintiffs it is ordered:

That the defendant show cause before me at my chambers in Marion on the 12th day of November next, at 11 o'clock, a. m. or if any they can, why a writ of mandamus should not issue requiring that the trains mentioned in the complaint be stopped at the defendant's station in Latta for the purpose of receiving and discharging passengers.

That a copy of this order be served on the defendant company with the summons and complaint in this action.

C. A. WOODS,
Associate Justice Supreme Court.

Oct. 15th, 1904.

20 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Order.

An order to show cause why a writ of mandamus should not issue in the above entitled action having been made by me at chambers on the 15th day of October, 1904, returnable before me this day, and the defendant having made a return to said order by way of demurrer to the complaint, on motion of the Attorney General for the plaintiffs, with consent of counsel for the defendant,

It is ordered,

That the said return be heard before the full Court on the first day of the next ensuing term at 10 o'clck, A. M., or as soon thereafter as counsel can be heard.

C. A. WOODS,
Associate Justice, at Chambers, Marion, S. C.

I consent,

P. A. WILLCOX,
Defendant's Counsel.

November 12th, 1904.

21 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Demurrer.

Atlantic Coast Line Railroad Company, through its Attorneys, Willcox & Willcox, by way of return, first demurs to the complaint on the ground that it does not state facts sufficient to constitute a cause of action, viz:

I. In that the Railroad Commission, plaintiff, is without power to make the order, the violation of which is alleged as a cause of action.

II. In that the order of the Railroad Commission is not the result of a judicially determined fact and the Defendant, not having had its day in Court on the merits of said order, the enforcement of the order of the Railroad Commission deprives defendant of its property without due process of law and violates the constitutional protection to which defendant is entitled under article I, Sec. 5, of the Constitution of the State of South Carolina, as follows:

"The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

and under Article XIV, Sec. I, of the Constitution of the United States, as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

22 III. In that the Court in which this action is brought is without jurisdiction to try the question before it by a proceeding in mandamus, because

(*a*) No statutory authority is given the Supreme Court to hear and determine the issue involved under Section 2069 of the Code of Laws of South Carolina of 1903, if the power of the Railroad Commission to pass the order is question under Section 2096 be otherwise admitted.

(*b*) The Writ of mandamus is solely for the purpose of the enforcement of a plain ministerial duty or that which is duly ascertained and determined in a court of competent jurisdiction and cannot be used as an original proceeding to try and determine the question of right.

IV. In that the complaint alleges that the Railroad Commission has found as a matter of fact that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta by the Atlantic Coast Line Railroad Company at its station in Latta, South Carolina, (the same not being a judicially determined fact), and the complaint nowhere states as a fact that said accommodations do not exist, which is a fact for judicial determination.

V. In that if it is within the power of the Railroad Commission to require defendant Company to give greater conveniences to a given locality, this power does not embrace the right of the Commission to regulate this convenience by a control of the operation of specific trains.

WILLCOX & WILLCOX,
Defendant's Attorneys.

23 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS ET AL., &C., Plaintiff-,
against
THE ATLANTIC COAST LINE RAILWAY CO., Defendant.

Opinion.

EUGENE B. GARY, *A. J.*:

This is an application to the Supreme Court, in the exercise of its original jurisdiction, for a writ of mandamus, compelling the defendant, to obey the order of the plaintiffs, requiring it to stop certain trains at its station in the town of Latta, S. C. for the accommodation of passengers.

The following is a copy of the petition:

"I. That the said plaintiffs were at the time hereinafter stated, and still are, the qualified Railroad Commissioners of the State of South Carolina.

II. That the Atlantic Coast Line Railroad Company was at the times hereinafter mentioned, and still is, a railroad corporation organized and existing under the laws of the State of South Carolina, and known by the name Atlantic Coast Line railroad Company, and was the owner of and operating a certain railroad known

as the Atlantic Coast Line Railroad, leading from the town of Wilson, through the town of Fayetteville, in the State of North Carolina, to Florence, in the State of South Carolina, and operating a branch line commonly known as the Latta Branch Railroad, leading from the town of Latta, in Marion County, on said Railroad, to the town of Clio, in Marlboro County, South Carolina, commonly known as the Latta Branch Railroad.

III. That on June 7, 1904, certain citizens of the State of South Carolina residing at Latta, and along the line of the said Latta Branch Railroad filed a petition with the said plaintiffs, as Railroad Commissioners of the State of South Carolina alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers traveling on said railroad, and asking that the said railroad company be compelled to stop its passenger trains, Numbers 32 and 35, at its station in the town of
24 Latta when flagged for the purpose of receiving and delivering passengers at said station.

IV. That thereafter, on July 29, 1904, the said Railroad Commissioners of the State of South Carolina, after investigating the facts stated in said petition, and after notice to and hearing the said above named defendant in reference to the facts of said petition, found as a matter of fact that sufficient accommodations were not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta, by the Atlantic Coast Line Company at its station in Latta, South Carolina, and said Railroad Commissioners thereupon made an order that the said passenger trains, Numbers 32 and 35, operated by the Said Atlantic Coast Line Railroad Company, should stop when flagged at the said station on and after August 1, 1904.

V. That a copy of said order of the Railroad Commissioners was served upon the Atlantic Coast Line Railroad Company more than sixty days prior to the commencement of this action, but that the said railroad company had neglected and refused to comply with the said order to stop said trains at said station for the purpose of receiving and delivering passengers.

VI. That on October 7, 1904, the said Railroad Commissioners of the State of South Carolina, requested the attorney General of the State of South Carolina to commence this action on their behalf to compel the said railroad company to comply with said order, and to stop said trains Numbers 32 and 35, on flag at the station of Latta for the purpose of receiving and discharging passengers on said trains."

The defendant demurred on several grounds, the first of which is as follows:

I. In that the Railroad Commission, Plaintiff, is without power to make the order, the violation of which is alleged as a cause of action." Section 2067 code of laws confers upon the Commissioners general supervision of all Railroads in this State. Section 2069 is as follows:

"Whenever, in the judgment of the Railroad Commissioners, it shall appear that repairs are necessary upon any such railroad,

or that any addition to the rolling stock, or any enlargement of, or improvement in, the stations or station houses, or any modification in the rates of fare for transporting freight passengers, or any change in the mode of operating the road and conducting
25 its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, they shall give information, in writing, to the corporation of the improvements and changes which they adjudge to be proper; and if the said company shall fail, within sixty days, to adopt the suggestions of said Commissioners, they shall take such legal proceedings as they may deem expedient, and shall have authority to call upon the Attorney General to institute and conduct such proceedings."

Our construction of the statute is that it invests the Commissioners with power to determine the facts stated in their order, but they have no authority to enforce their decision.

Provision is made for the enforcement of their decisions in section 2119 Code of Laws, which is as follows:

"If any railroad company shall neglect or refuse to comply with the provisions of this Chapter or with the rules and regulations prescribed by said Commissioners within the limits of their authority, such company shall be subject to a writ of mandamus, to be issued by any Justice of the Supreme Court, or Circuit Judge, upon application of the Commissioners, or a majority of them, to require compliance with said laws or said rules and regulations, and failure to comply with said writ of mandamus shall be punishable as for contempt; and for any wilful violation of any of said laws, or failure to comply with the requirements of such rules or regulations, the Court may award such costs and counsel fees, on the return of said writs, and after due deliberation, as may be just."

It would have been useless to enact this section, unless the Commissioners are empowered to make a decision upon the matters mentioned in section 2069.

The defendant's attorneys in their argument contend, that the statute does not confer upon the Commissioners, the power to direct *in detail* how, when, and in what manner it shall operate its trains.

In this connection we will consider the ground of demurrer numbered 5, which is as follows:

"V. In that if it is within the power of the Railroad Commission to require defendant Company to give greater conveniences to a given locality, this power does not embrace the right of the Commission to regulate this convenience by a control of the operation of specified trains."

26 The legislature under the police power may require *all* regular passenger trains not engaged in interstate commerce, to stop at certain stations. Gladson *v.* Minnesota 166 U. S. 427.

It therefore necessarily follows that it has the power to compell a less number and may specify the particular trains required to stop at a station.

In the case last mentioned the Court says, "A railroad corporation created by a State is, for all purposes of local government, a do-

mestic corporationm and its railroad within the state is a matter of domestic concern. Even when its road connects, as most railroads do, with railroads in other States, the State which created the corporation, may make all needful regulations of a police character, for the government of the company, while operating its road in that jurisdiction. It may prescribe the location and the plan of construction of the road, the rate of speed at which the trains shall run, and the places at which they shall stop, and may make any other reasonable regulations for their management, in order to secure the objects of the incorporation, and the safety, good order, convenience and comfort of the pasengers and of the public.

All such regulations are strictly within the police power of the State." See also R. R. Com. *v.* Minnesota, 193 U. S. 53, and N. C. Com. *v.* R. R., 49 S. E. 191.

The second ground of demurrer is as follows:

"II. In that the order of the Railroad Commission is not the result of a judicially determined fact, and the Defendant, not having had its days in Court on the merits of said order, the enforcement of the order of the Railroad Commission deprives defendant of its property without due process of law and violates the constitutional protection to which defendant is entitled under Article I, Sec. 5, of the Constitution of the State of South Carolina, and under article XIV. Section 1 of the Constitution of the United States."

The facts were determined by a tribunal well recognized, and adopted, throughout the land.

The defendant was notified appeared, and contested the facts upon the merits.

27 In the case of L. & N. R. Co. *v.* Schmidt 177 U. S. 230. the court uses this language: "It is no longer open to contention, that the due process clause of the Fourteenth Amendment of the Constitution of the United States, does not control mere forms of procedure in State Courts, or regulate the practice therein. All its requirements are complied with, provided, in the proceedings which are claimed not to have been due process of law, the person condemned has had sufficient notice, and adequate opportunity has been afforded to defend."

The third ground of demurrer is as follows:

"III. In that the Court in which this action is brought is without jurisdiction to try the question before it by a proceeding in mandamus, because,

(*a.*) No statutory authority is given the Supreme Court to hear and determine the issue involved under Section 2069 of the Code of Laws of South Carolina, of 1903, if the power of the Railroad Commission to pass the order in question under Section 2069 be otherwise admitted.

(*b.*) The writ of mandamus is solely for the purpose of the enforcement of a plain ministerial duty of that which is duly ascertained and determined in a court of competent jurisdiction and cannot be used as an original proceeding to try and determine the question of right."

The objection urged in subdivision "a" is untenable, for the reason that the jurisdiction of the Supreme Court is not invoked, for the purpose of hearing and determining the issue, involved under section 2069, but to enforce the decision rendered by the Commissioners. Mandamus is not only the usual and proper method of obtaining enforcement of such decisions, but it is the remedy provided by section 2119 code of laws, 23 Enc. of Law 662. This likewise disposes of subdivision "B."

The fourth ground of demurrer is as follows:

IV. In that the complain- alleges that the Railroad Commission has found as a matter of fact that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta, by the Atlantic Coast Railroad Company at its station in Latta, South Carolina, the same not being a judi-
28 cially determined fact) and the complaint nowhere states as a fact that said accommodations do not exist, which is a fact, for judicial determination."

We have already shown that the Commissioners were empowered to determine the facts set forth in their order.

It is the judgment of this court that the demurrer be overruled, but with leave to the defendant to file a return to the rule to show cause, within twenty days after notice of the filing of this opinion.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

29 [Endorsed:] 5572. The State of South Carolina. In the Supreme Court. C. W. Garris *et al.*, Plaintiffs, *v.* Atlantic C. L. R. R. Co., Respondent. Opinion by Eugene B. Gary, A. J. We concur, Y. J. Pope, C. J., Ira B. Jones, A. J., C. A. Woods, A. J. Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 15 Mar. 1905. U. R. Brooks, Clerk.

30 STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,

against

THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Answer.

The defendant, Atlantic Coast Line Railroad Company, by way of return to rule to show cause and by way of answer to the complaint herein and repeating by way of rule to show cause and answer the legal grounds taken as its demurrer to the complaint, alleges:

For a First Defense.

I. Admits the official character of the plaintiffs, as alleged in paragraph one.

II. Answering paragraph two, denies that Atlantic Coast Line Railroad Company is a corporation organized and existing under the laws of the State of South Carolina, but avers that it is a corporation organized and existing under the laws of the State of Virginia, and admits the remaining allegations of paragraph two.

III. Answering paragraph three, admits that a petition was filed by citizens of the State of South Carolina, residing at the station of Latta, S. C., but not along the line of the Latta Branch Railroad; denies that petitioners alleged that Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers travelling on said Railroad, and, on the contrary, avers that
31 the character of the petition was solely for the purpose of requiring the defendant to stop its passenger trains, numbers thirty-two and thirty-five, at the station known as the town of Latta, on flag.

IV. Answering paragraph four of the complaint, the defendant admits that the Railroad Commission of South Carolina may have investigated the facts stated in the petition as filed before them, and admits that defendant was notified and appeared before said Commission, but denies that defendant had such a hearing before the Commission as is required by law, with the privilege of having witnesses sworn to testify against the reasonableness of the petition; it denies that the Commission found, as a matter of fact, that sufficient accommodation was not furnished the citizens along the Latta Branch Railroad and in the town of Latta by Atlantic Coast Line Railroad Company, defendant, at its station in Latta, S. C.; admits that the plaintiffs made an order that said passenger trains, thirty-two and thirty-five, operated by the said Atlantic Coast Line Railroad Company, defendant, should stop, when flagged, at said Latta station on and after August 1st 1904, but denies that the finding of said plaintiffs, Railroad Commissioners, involved a finding of insufficient accommodation, as alleged.

V. Admits paragraphs five and six of the complaint and denies each and every other allegation of the complaint not herein specifically admitted.

For a Second Defense.

The defendant alleges:

I. That sufficient passenger accommodations are now furnished the citizens of Latta and those residing along the Latta Branch Railroad, so that in every respect of passenger travel they are frunished every reasonable facility; that in addition to a number of passenger trains of local character daily, there is also afforded them
32 the convenience of a daily passenger train each way for through travel other than trains thirty-two and thirty-five; that trains thirty-two and thirty-five are known as the Florida and West Indian Limited trains, running between the cities of New York and Tampa, Fla., making a daily connection with steamship lines plying between Tampa, Fla., and Havanna, Cuba; that said trains are primarily for the purpose of through passenger traffic, which cannot be accommodated otherwise; that said trains are engaged in

the interstate transportation of passengers and United States mail through the States of New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida, with through connections at the city of New York and at Tampa, Florida, and intermediate cities with what is known as the wider traveling public that cannot be accommodated by defendant if these trains are localized; that the through travel, the carrying of United States mail and interstate commerce travel has grown to such an extent that it can only be accommodated by operation of the trains in question, running a very fast schedule, stopping at only necessary points; that these trains are operated for this class of business, other trains affording ample accommodations and facilities for all other business; that the trains in question, now stopping only at necessary points, are run necessarily with a very fast schedule, in order to accommodate the business described, and if the trains are required to stop at Latta, S. C. and points similar to the station of Latta, S. C., the running time of these trains will be much lengthened, their usefulness for their primary object would be entirely destroyed, said trains could not be operated and the defendant company would be denied one of its principal sources of revenue and its ability to accommodate the business described; that the defendant operates
33 these trains at a great expense, with every available modern equipment for the accommodation of through travel, and in its competition with other through (travel) lines in the business involved, must maintain their efficiency as to fast schedules and in other respects, and if these trains are interferred with by local legislation of the character involved and are required to stop at Latta, S. C. and similar points, the defendant will be unable to compete with other similar trains operated by competing lines and must abandon these trains and the business in question; that the trains in question are not regular passenger trains for carrying passengers from one point to another in the State of South Carolina, such traffic being amply provided for by other trains; that the trains in question are used exclusively for interstate traffic from and to points without the State of South Carolina, except such traffic as may be accommodated by the stopping of these trains at points necessary in their being operated for their primary purposes as interstate commerce trains; that these trains are not subject to regulation by the Statutes of the State of South Carolina, or by its Railroad Commission, under the circumstances involved in the alleged cause of action, and to stop them, as prayed for, would impede and obstruct interstate commerce and deny to plaintiff a rightful and judicious management of its property. That said order of the Railroad Commission of South Carolina is unreasonable, unnecessary; a direct burden upon interstate commerce and therefore, a violation of and conflict with Section 8, of Article 1 of the Constitution of the United States, which provides that Congress shall have the power to regulate commerce with foreign nations and among the several states, and further, that said order is a direct and unnecessary interference with the speedy carriage of mails of the United States.

WILCOX & WILCOX,
Defendant's Attorneys.

34 STATE OF SOUTH CAROLINA, *Florence County:*

Personally appeared P. A. Willcox, who being duly sworn says that he is a Division Counsel of Atlantic Coast Line Railroad Company, defendant; that the allegations of the foregoing answer are true of his own knowledge, except such matters as are stated on information and belief, and as to such matters he believes them to be true; that this verification is not made by defendant because defendant is a corporation.

P. A. WILLCOX.

Sworn to before me this 10th day of April, A. D. 1905.
WALTER H. WELLS, [L. S.]
Not. Pub. for S. C.

35 STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Order.

The defendant's answer and return having been filed herein, it is, on motion of the Attorney-General,

Ordered, That it be referred to F. F. Covington, Esquire, to take testimony on all issues involved and report the same to this Court, as soon as the convenience of all parties interested in the taking of said testimony will permit, and said Referee is hereby empowered to report any special matter.

Y. J. POPE,
Chief Justice of the Supreme Court of South Carolina.

36 STATE OF SOUTH CAROLINA, *Marion County:*

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

LATTA, S. C., *July 27th*, 1905.

Pursuant to an order of the Supreme Court hereto attached, a reference was held by me today, July 27th, at Latta, S. C., in the above entitled cause.

Present: J. H. Wharton and J. H. Earle, representing Board of Railroad Commissioners, Plaintiffs, and A. W. Anderson, General Superintendent of the Atlantic Coast Line Railroad Company, rep-

resenting the Defendant Railroad Company; W. H. Townsend, Assistant Attorney General, and M. C. Woods, Esq., representing Plaintiffs, and Messrs. P. A. Willcox, J. M. Johnson and Henry Mullins, representing the Defendant Railroad Company.

Before beginning the taking of testimony it was understood that all testimony would be taken subject to objection, and it was agreed that testimony objected to need not be taken on a separate sheet and that the testimony need not be signed by the witnesses.

The following testimony was heard:

J. J. BETHEA, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods, and testified as follows:

Q. Mr. Bethea, where is your residence?
A. Here, sir.
Q. And your business?
A. Here.
Q. What is your business?
A. I am a merchant and farmer.
37 —. Up to the year of 1905 did you hold any official position in Latta, and if so, for how long?
A. I was Intendant, sir, for two years in connection, 1904 and 1903.
Q. Did you as such Intendant believe that the accommodations furnished the people were insufficient?
A. Yes.
Q. And, upon your opinion, make any effort to secure better accommodations?
A. Yes, sir.
Q. Well, now, state the history of this matter, what you did?
A. Well, sir, I wrote to the Railroad officials several times, asking them for better accommodations.

Objected to on the ground that any correspondence should be produced. Counsel for defendant state that they are willing for copies of letters to be used.

Letter from J. J. Bethea to H. M. Emerson, dated Nov. 19, 1903, offered in evidence; objected to as irrelevant and as being nothing more than a declaration on the part of Mr. Bethea and on the further ground that it is not a part of the petition involved in the complaint; introduced subject to objection as Exhibit A. The letter is as follows:

LATTA, S. C., *November* 19, 1903.

Mr. H. M. Emerson, Wilmington, N. C.

DEAR SIR: Our town is progressing very rapidly and people are moving in here to get the benefit of the school and church advantages; and others would come, but say the means of getting out and in town by rail is too bad. We want it so we can go South to Charleston, Columbia, or anywhere in that direction and get home without having to lay over. As it is we can go to Wilmington,

N. C., all O. K., but we can't get home when we get off without laying over in Florence or somewhere.

Please look into this matter at once, as we and the people on the Latta Branch road are at a disadvantage with the adjoining towns, and please let me hear from you at once in regard to this matter, as I must do something.

Awaiting your very prompt attention, I am,

Very respectfully,

(Signed) J. J. BETHEA,
Intendant, Town of Latta, S. C. [SEAL.]

38 Letter from W. N. Royall to J. J. Bethea, dated Nov. 28, 1903, offered in evidence; objected to on same grounds as to Exhibit A. Introduced in evidence subject to Objection as Exhibit B. This letter is as follows:

WILMINGTON, N. C., *Nov.* 28, 1903.

Mr. J. J. Bethea, Intendant, Latta, S. C.

DEAR SIR: Referring to your letter of the 19th inst., addressed to Mr. H. M. Emerson, which has been referred to me by Mr. J. R. Kenly, our Fourth Vice-President.

We have looked very carefully into this matter, and I regret to say that the schedule of our Train No. 32, which has just been arranged for our winter season, will be so fast that it will be impossible for us to make an additional stop with this train between Florence and South Rocky Mount. The schedule is a very fast one and the train is quite heavy, and we are unable at present to make up any time, and it is with great difficulty that we can hold to the present schedule figures. It would give us pleasure to comply with your request if it was in our power to do so.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Letter from J. J. Bethea to J. R. Kenly, dated Dec. 10, 1903, offered in evidence; objected to on same grounds as to Exhibit A. Introduced in evidence subject to objection, as Exhibit C. This letter is as follows:

LATTA, S. C., *Dec.* 10, 1903.

Mr. J. R. Kenly, Wilmington, N. C.

DEAR SIR: Yours to hand and in reply will say that all we ask for is better accommodations so we can get in here from the South at night. As it is we have to lay over at Florence or elsewhere. We have always been a very modest people; never asked for a passenger depot and freight too, nor have we ever been before the R. R. Comm., but appeal to you. We want it so fixed that we can get in here from Florence at night. We don't ask for fast trains to stop but we want better accommodations.

Let me hear from you at once, as we feel as much of importance as our sister towns—Marion and Dillon—and insist on you to serve us

with (without?) having us to take any further action in this matter.

Awaiting your attention, I am, sir,

Very truly,

(Signed) J. J. BETHEA,

[SEAL.] *Intendant, Town of Latta, S. C.*

39 Q. Mr. Bethea, as a matter of fact, did Mr. Royall or any one connected with the railroad agree to furnish what you regarded sufficient accommodations, and if not, then what did you do?

Objected to as purely a matter of opinion.

Q. Did Mr. Royall or the Coast Line, after complaint made to them, furnish accommodations.

Objected to as purely a matter of opinion, as being a legal conclusion.

A. Well, sir, it will take some little time to explain it. They were very slow about it. I was coming from the up-country one night. There was a gentleman with me who had a ticket for this place. I had one. I was sick——

Q. What point in the up-country?

A. From Greenville. I was sick. I didn't care to be worried at all. I had nothing to say at all. He threatened that night to sue the railroad company because they carried us on by, carried us to Dillon; and I was very sick that night myself. Well, soon after that Mr. Royall wrote me—I never said a word to him about this—that they would try to change the schedule of the Latta Banch train so as to meet that very objection.

Q. That is, for parties coming from the up-country?

A. Yes. I was told by a railroad man they had got uneasy about that case; but of course I can't bring that out.

Mr. WILLCOX: We object at this point to the answers of the witness so far as not responsive to the question, and will move to strike out.

Q. Mr. Bethea, is there much travel between this point and points beyond Columbia, and Columbia, and points on the road
40 leading through Orangeburg to Augusta?

A. Yes, sir, I think there is a good deal.

Q. Mr. Bethea, is it possible to go from Latta to the up-country and get a through connection? What do you have to do?

A. Well, sir, we have to go to Columbia, pay a hotel bill, and wait until next day.

Q. Wait until the next day?

A. Yes, sir, or lie over in Florence.

Q. What about points on the Augusta road?

A. Well, I don't know the connection there.

Q. You have had no experience going to Orangeburg and points there?

A. No, sir.

Q. If you wish to go to points on the Greenville road, as I understand, you have to lie over?

A. Yes, or to Spartanburg; anywhere that you pass through Columbia.

Q. How about Chester, and Yorkville?

A. Anywhere that you pass through Columbia, as far as I know. That has been my experience. I know it is to Spartanburg.

Q. Mr. Bethea, how many trains are there between here and Columbia a day, that is, trains that stop at this point?

A. Well, there is only one, sir; you might say only one. Of course the Latta Branch runs from here there, but there is only about an hour's difference in the run at night, and I don't know whether it makes connection when it gets there or not. Really, only one.

Q. What is the number of the train you get connection on? What time does it pass here?

A. Seven o'clock in the evening. I don't think we can leave here in the morning and get to Columbia.

Q. Are you sure about that?

A. Well, I would like to ask something about the connection. I know when Clide goes to Wofford College he has to always
41 go at night and I have to pay a hotel bill in Columbia for him. And my wife has done the same thing, and I have had it to do. And I have been told by the railroad people that there was no connection, that it was useless to go in the morning. We can go to Charleston.

Q. You can go to Charleston twice a day, then?

A. Yes, sir.

Q. You can only go to Columbia and the up-Country once a day?

A. That has been my understanding.

Q. As mayor of the town, were very many complaints made to you about the connections here?

Objected to as irrelevant and leading.

A. That really started the fight.

Q. The complaints people made to you?

A. Yes, sir. They seemed to think I was the man to push it.

Q. What size place is Latta now?

A. I suppose we have something like a thousand inhabitants. We haven't had a census taken here.

Q. Has the growth been very rapid in the last few years?

A. Yes, sir.

Q. What about the country back of it?

A. In what respect?

Q. What about the growth of the country and the number of people who come here to take the train?

A. I saw a man a while ago who wanted to go away and he said he wanted to take 32 tonight and would have to go to Dillon.

Objected to as being irrelevant and pure hearsay.

Q. Is Latta a junction?

A. Yes, sir.

Q. Is there a road leading back from Latta?

A. Yes, sir; to Clio.

42 Q. What is the length of that road?

A. I think about twenty miles.

Q. Does that pass through a very thickly-settled country?
A. Well, sir, it is right—yes; on the road there is points where it is not thick, but nearby it is.
Q. The country tributary to that road, I will say?
A. Oh, yes.
Q. Is the travel heavy?
A. I don't know, sir. I never go to the depot, hardly; only on business.
Q. When you were mayor, as a matter of fact did you have a great many complaints from the people in the back territory and Clio?

Mr. WILLCOX: We object to all questions as to the Latta Branch road as irrelevant. We object to any declarations of other parties by way of complaints through Mr. Bethea, the witness, as hearsay, secondary evidence, and irrelevant.

Q. Mr. Bethea, we will start at it differently. In what Counties is the Latta Branch road located?
A. Marion and Marlboro.
Q. In South Carolina?
A. Yes, sir.

Mr. Willcox objects to all questions concerning the Latta Branch road on the ground of irrelevancy.
Q. As a matter of fact, did there come to you many complaints from the people in the territory tributary to the Latta Branch railroad about the accommodations furnished here?
A. Yes, sir.
Q. A large number?

Objected to as irrelevant and secondary evidence.

Q. Now, Mr. Bethea, is the volume of travel from this point large?
A. Well, sir, it is not near what it would be if we had the proper accommodations.

43 Objected to as being simply a conclusion without statement of fact to base it upon.

Q. Is the volume of travel large, as a matter of fact, without the accommodations? Is this a large passenger point?
A. Yes, sir.
Q. Now parties desiring to catch trains 35 and 32, what do they have to do?
A. They go to Florence or Dillon.
Q. How far is it from here to Florence.
A. It is about 24 miles.
Q. And that involves how much extra expense?
A. Well, the expense there and back here.
Q. The railroad forces you to pay that mileage?
A. Yes.
Q. Is there any other way you can catch trains 35 and 32?
A. Except only to go to Dillon and Florence.
Q. How much distance is that?

A. To Dillon?
Q. Yes?
A. It is about seven miles, I think.
Q. You have to drive to Dillon?
A. Yes, sir. In the winter it is one of the worst roads that ever was made a road, I reckon.

Mr. WILLCOX: That is the fault of Marion County—not the railroad.

Q. Is the railroad to blame for that bad road, a part of it? How about the Buck Swamp crossing?

Objected to as irrelevant.

Q. Is the Buck Swamp crossing dangerous?

Objected to as irrelevant.

A. It has always been considered so.
Q. How do you consider it?
A. Oh, I think it is a very dangerous place.

Objected to as being a matter of opinion without a statement of fact to base it upon.

44 Q. Mr. Bethea, have you observed many people having to drive to Dillon to take this train?
A. Oh, yes, sir.
Q. A large number?
A. A good many.
Q. Mr. Bethea, did you have any conversation with Mr. W. N. Royall about ticket arrangements at this place?
A. Yes, sir; correspondence, too.
Q. Well, the correspondence I haven't. What did he promise you to do when you saw him on the train?
A. I didn't see him on the train. He just simply wrote me he would take up the matter, and he done it; sent a man down here, who I found very agreeable. He stayed here for some time and investigated matters and he come to me and told me, "I am glad to be able to report favorably."
Q. Favorably on what?
A. That we would have a coupon office—that is what I asked him for. And Mr. Royall wrote me in a few days he was glad to say to me that this would be a coupon office from now on. Then at Florence Mr. Royall last—I think perhaps it was in December—Mr. Berry and myself met Mr. Royall in Florence and Mr. Royall went on in saying that he had always tried to be as accommodating to us as he could be. He said to me, "Mr. Bethea, recently you have asked to make Latta a coupon office and," he says, "I took the matter up at once, and you have a coupon office." I said, "I am sorry to tell you, Mr. Royall, we can't get a ticket anywhere. We can come to Florence; we can go to Fayetteville."
Q. So that only local tickets have been on sale?
A. He says, "Well, it was the agent's fault; it was a coupon office."

Question and answer as to Latta being a coupon office objected to as irrelevant.

45 WITNESS: Mr. Royall seemed to be very much surprised when I told him we couldn't get a ticket anywhere.

Q. What about mileage tickets?

A. Well, I have never bought one, sir. I guess you can get one here. I don't know whether you can or not.

Q. So you can't get through tickets here, you buy local tickets?

A. Have to buy local tickets.

Mr. WILLCOX: We make the same objection to all these questions.

Atlantic Coast Line folder for June 19th, 1905, offered in evidence.

Mr. WILLCOX: We have no objection to its going in, on the assumption that it will be used by both parties—so much of it as may be relevant.

Introduced in evidence and marked Exhibit D.

Q. You say Mr. Royall promised to make this a coupon office?

A. He said he had done it.

Q. Look at that and see if Latta is named as a coupon office? (Showing witness Exhibit D.)

A. I looked at it this morning, sir; I don't think I saw any.

Q. Do trains 32 and 35 stop at any point between the North Carolina line and Florence?

A. Stop at Dillon.

Objected to as irrelevant.

Q. Mr. Bethea, is there a water tank at Dillon?

A. I don't know, sir. I don't know whether there is or not.

Q. They do local business, then, between Florence and Dillon?

A. You mean the Coast Line?

Q. Yes, sir. Do they take on local passengers at Florence for these two points? Can you get on at Dillon and go to Florence, and get on at Florence and go to Dillon?

46 A. Yes, sir; oh, yes, sir.

Cross-examination.

By Mr. WILLCOX:

Q. Mr. Bethea, how many trains did you say passed Latta a day—stopped at Latta?

A. You mean going that way (towards Florence), going south?

Q. Going south?

A. There is only one passenger train—except the Latta Branch train. That is the statement I made. It passes here about 7 o'clock in the afternoon.

Q. Mr. Bethea, kindly refresh your recollection as to existing passenger trains, and begin as early in the day as any passenger train passes by Latta, stops at Latta and passes Latta, and for our information give us the number of passenger trains, or trains containing passenger accommodations, that stop at Latta? Begin in the first part of the day.

A. You mean and including the Latta Branch, too?
Q. Yes, sir.
A. I thought you said awhile ago you didn't want that in it at all.
Q. I didn't ask you to testify as to that so much as I asked you to testify as to the trains that stop at Latta. Now where they come from is, of course, strictly irrelevant, under our contention, and I ask you as to the trains that stop at Latta. That is all. The question would seem to be perfectly plain.
A. Well, the first train we have here in the morning is at 8 o'clock, coming from Clio, and then to Dillon.
Q. Does it stop at Latta before it goes to Dillon?
A. Yes.
Q. Well, kindly say that is one stop?
A. All right.
Q. What is the time of that stop?
47 A. About 8 o'clock. Then the same train returns from Dillon; comes back here; stops——
Q. At what time?
A. In about thirty minutes.
Q. About 8.30?
A. Somewhere along there. I don't know exactly the time. Then it takes you to Pee Dee; then comes back here;——
Q. Now, one moment. What connection does it make at Pee Dee?
A. It connects with the Wilmington train, sir, coming from Wilmington and going to Florence; the morning train.
Q. What other trains?
A. No other;—Yes, and also there is one going to Wilmington; that is, you will have to wait there a long, tedious wait.
Q. How long?
A. I don't know. Sometimes it is several hours; three or four hours.
Q. How about the schedule, though? What is the wait according to the schedule?
A. Well, I suppose it would be about an hour.
Q. Now, just go on, please, and trace up that train.
A. Then it comes back here; gets back here about ten o'clock——
Q. That is, to Latta?
A. Yes, sir.
Q. It leaves Pee Dee and comes back here to Latta and stops here. At about what hour?
A. Well, something like ten o'clock; not far from it.
Q. Now, trace up that train again, please, Mr. Bethea; its further perambulations?
A. Begin again?
Q. No, sir. You have got it to that point?
A. Well, the next train that comes to Latta——
Q. Let's trace up that train first, before we get through with it. Follow that train, please?
A. I thought you didn't want me to touch that train a while ago?

Now you seem to be anxious about it. Well, sir it goes back
48 to Clio about 11 o'clock.

Q. Leaves here about 11? Leaves Latta about 11?

A. Yes, sir, about a quarter past 11, I think. Then it gets back here about six o'clock.

Q. Comes back to Latta at six?

A. Yes, sir. It lies here until, I think it is about 7.50, perhaps. Then she goes to Pee Dee again.

Q. At about what hour?

A. Oh, I don't know what time she gets to Pee Dee; it leaves here about 7.50.

Q. Well, about what hour does it get to Pee Dee?

A. I don't know.

Q. Ever been on it?

A. Yes, but I didn't think about it. I knowed we had plenty of time.

Q. Well, it gets to Pee Dee at some time before 8?

A. Oh, they make good time going down there.

Q. When it gets back to Pee Dee what does it connect with?

A. Well, sir, it connects with the Wilmington train again, going to Wilmington.

Q. Does it connect with the train going to Florence?

A. No, sir, I don't think it does. I think you have to take the 7 o'clock train. I think they all do that, generally; they may if it is late; but I have heard several say they wouldn't risk it. They would always go on the 7 o'clock train. My understanding was it didn't connect with that train at all; it connected with nothing when it first got there, and only lay there and waited for the train going to Wilmington.

Q. Well, I don't know; I am just asking you these questions. Can't you leave on that train from Latta, get off at Pee Dee, and then get on the train from Wilmington to Florence?

A. I don't know; I have never tried it. Everybody don't
49 do it.

Q. You at least connect with the Wilmington train going from Charleston to Wilmington, or from Florence to Wilmington?

A. Yes, sir.

Q. What becomes of that train then?

A. Which?—the Latta Branch?

Q. Yes?

A. It comes back here.

Q. Does it stop at Latta?

A. Oh, yes, sir.

Q. What time does it get here?

A. I don't know what the schedule time is. It is something not far from 11 o'clock when it leaves here.

Q. Then where does it go?

A. Goes to Clio; some time between 10 and 11, I don't know when.

Q. What other passenger trains have you passing Latta, I mean stopping at Latta?

A. In the morning, at half past ten, we have the regular mail train passing, going north.
Q. At what hour does it stop at Latta?
A. At about half past ten.
Q. That is the regular passenger train?
A. Yes.
Q. Run sleepers?
A. I guess so; I don't know.
Q. Sleeping cars?
A. It runs a Pullman.
Q. That is what I mean.
A. One Pullman car.
Q. Do you know where that train runs from; from what point to what point?
A. Oh, I guess it comes from Washington City.
Q. Well, not the one going that way, of course?
A. Yes; that is the one I am talking about now; I don't know where it comes from.
Q. But the one that comes up here goes to Washington, doesn't it?
A. Yes.
Q. It comes from what point?
50 A. I don't know; down south somewhere.
Q. What is the next train?
A. Then that afternoon at 7 o'clock—supposed to be the same train, running over the same route.
Q. Coming from what direction?
A. From the north, going south.
Q. Stops at Latta?
A. Yes.
Q. Have you stated the time?
A. Yes. I have just stated 7 o'clock.
Q. Does that run sleeping cars?
A. One pullman, sir.
Q. You can go on to Florence on that train?
A. Yes.
Q. Or stop at Pee Dee and take the Wilmington train?
A. Yes, if you want to go to Wilmington.
Q. You stated that ran a Pullman also, carried a Pullman?
A. Which?
Q. That train?
A. Yes, it carries a Pullman.
Q. Mr. Bethea, any other trains stopping at Latta during the day, during the period you have described, that accommodate passengers?
A. Freight trains, I think, sir,—some people—where they can't make connections any other way they take the freight.
Q. How many freight trains?
A. Well, we usually have one going north and one south.
Q. What time?
A. I don't know.
Q. Well, about what time?

A. From 12 to 1.
Q. Going south?
A. Yes.
Q. Has that passenger accommodations?
A. It has a caboose.
Q. Has it a coach?
A. Awful rough one.
Q. Well, has it a coach?
A. Some kind of a thing; it is a mighty sorry one, though.
51 Q. Doesn't it have a coach?
A. Yes, sir.
Q. It is not a caboose?
A. That is what I call it.
Q. Do you know the difference between a coach and a caboose?
A. No. I am not a railroad man.
Q. Then you wouldn't undertake to describe it?
A. No.
Q. When does that train pass Latta, going back?
A. You mean that one going south?
Q. Which one did you describe just now?
A. That was the one.
Q. When does it stop, going back?
A. Then one comes before dinner, going north.
Q. About what time?
A. I don't know her schedule, but she comes sometimes before the passenger and sometimes behind it; according to how much she has to do.
Q. That has passenger accommodations?
A. Yes, sir.
Q. Has a coach?
A. Yes, sir. Oh! they run, too, sometimes. I come from Dillon in seven minutes the other day!
Q. Seven minutes?
A. Yes, sir, that's just what I made it by my watch. A mile a minute!

Redirect examination.

By Mr. Woods:

Q. None of those numerous trains you have described give but one connection for the up-country, do they—Sumter, Columbia, and the up-country?
A. That is my understanding, sir.
Q. And which one is that?
A. That is the train at night, sir.
Q. Passing here at what time?
A. Seven o'clock.
Q. In taking that train in going to the up-country, it is impossible to get to the up-country from Latta without passing the night at Columbia?
52 A. Yes,—Sumter or Florence or somewhere.
Q. If train 35 stopped would it be necessary for you to lie over.

A. Well, sir, she has never stopped for me; I have heard it wouldn't.

Q. It was your understanding it would give you the connections for the up-country?

A. Yes, that is my undertsanding.

Rev. J. H. THACKER, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. What is your business?

A. I am living here now, and in charge of the Methodist church here.

Q. Just state what you know about the volume of business for the up-country, and about the connections, and what experience you have had?

A. Well, as to the volume of business, of course I am not in the business world, and know very little about that,—so far as the amount of travel. I have known quite a number of people who wanted to make connections from this point to other points that were put to inconvenience to make them. So far as I am personally concerned, all I could say from a personal standpoint is that I have wanted to go to the up-country once or twice since I have been here and I have to take a train which would cause me to lie over either in Sumter or Columbia each time. Last summer just after our daughter got over a spell of typhoid fever the doctor thought it was necessary for us to go to the up-country. I went to the agent at this place to know if it would be possible to get this fast train going at 4 o'clock, passing here about 4 o'clock in the morning, if it would be possible to get that train to stop here so we could make
53 the trip and get to our destination about 3 o'clock in the afternoon. He said it would be impossible.

Q. The stopping of that train would have furnished the accommodation you wished for the up-country?

A. That is, I could have gone beyond Columbia in one day. But as I couldn't get that train to stop I took that 7-o'clock train, going south, and had to spend the night either in Sumter or Columbia and then go on the next day; which we did so,—took that train.

Q. What point in the up-country were you going to?

A. We were going to Laurens.

Q. Does this testimony that you have given as to those accommodations apply to all points, to Columbia and all points beyond Columbia?

A. Yes, sir. You can't go to Columbia by taking any morning train that leaves here, except that train which passes here about 4 o'clock—which does not stop here.

Q. If that fast mail stopped it would give you a morning connection with Columbia and the up-country?

A. Yes, sir.

Q. Which you have not now.

A. Yes, sir.

Q. And you say there is a large volume of travel, so far as your

observation extends, that wishes that connection?

A. Well, you know a "large volume" is a relative term, of course; quite a number of people do want that connection.

Q. That's what I mean.

A. Yes, quite a number of people. For instance, I had a neighbor who had to go to the up-country. He took his family about midnight and drove to Dillon in order to catch that train.

Q. Then you know it to be a fact that parties drive to Dillon to get the Columbia connection?

A. Yes, sir.

54 Cross-examination.

By Mr. WILLCOX:

Q. What kind of connection do you say that you would make going to Sumter, going to the up-country, provided tra-n 35 would stop at Latta?

A. Well, I don't know those numbers, now; is that the one going south?

Q. Yes, sir, at 3 or 4 o'clock in the morning.

A. If train 35 would stop here I could go to Sumter, which I could make connection then with the train going from Charleston through Columbia to Laurens; wouldn't have to stop any more. That train leaves Sumter, I think, about 9.30. Whereas, if I can't get that train, I can't get to Columbia at all until that night.

Q. Can't you leave Latta on train 39—that is the train that comes by here in the afternoon—and go through to Sumter and make the same connection?

A. No, sir, not without spending the night.

Q. Where?

A. At Sumter.

Q. You can make the connection?

A. If I take train 39, going south, I will go to Sumter and get into Sumter in the night, spend the rest of the night there.

Q. At what time?

A. I think it gets there about 9.30. Then I spend the night there and take then that 9.20 train leaving Sumter for Columbia and Greenville next morning.

Q. Which is the same train you would take from Sumter provided you went on 35?

A. Yes, sir.

Q. So the difference in the two accommodations, then, in your mind, is the difference from spending the entire night in Sumter and having your rest broken in Latta by getting up at 3 o'clock in the morning? Isn't that the difference?

A. No, sir, not entirely; because a man who has to keep
55 the sifter going on a limited salary has to look out for hotel bills.

Q. Isn't that the difference between the two?

A. Well—the hotel bill involved, also.

Q. Well, you can put that in, but I am asking you if the differ-

ence between the two connections isn't the difference between leaving here for Sumter on 39 at night, going to Sumter and taking the train for the up-country next morning, and, on the other hand, getting up at 3 o'clock in the morning and taking the train for Sumter? Isn't that the actual difference?

A. No, sir, I wouldn't say so. Because we can get up in the morning and make the trip in the same day, without interruption except at Sumter; but we have to start the day before, at 7 o'clock, in order to get to our destination by 3 o'clock the next day. Whereas we can leave here between 3 and 4 o'clock in the morning and get to that destination.

Q. Isn't that the difference, then?

A. It is, in the matter of time.

Q. In the matter of taking the trains that is the difference?

A. In the matter of time that is the difference; because we save just that much time.

Redirect examination.

By Mr. WOODS:

Q. You save the hotel bill, too?

Objected to as leading, and, if placed in a different way, as irrelevant.

Recross-examination.

By Mr. WILLCOX:

Q. Mr. Thacker, can't you leave on train 39 at night, at 7 o'clock, and go on through to Columbia without stopping at Sumter?

A. Oh, yes. But then the same conditions exist there.
56 You have got to pay a hotel bill there. For instance, I had my whole family, had to carry my whole family. We were all broken down with waiting on a case of typhoid fever for forty some odd days. The doctor advised me that we all go, and the hotel bill was quite an item to me. I would have to pay that hotel bill in Columbia just the same as I did in Sumter.

Q. Hotel bill—sleeping and eating—is an ordinary incident of travel, isn't it?

A. Well, it is a very extraordinary one to some folks; it is to me.

Mr. WOODS: Is your family quite large and the hotel bill a considerable item?

A. Yes.

Objected to as irrelevant.

H. E. K. SMITH, Called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods, and testified as follows:

Q. Where do you reside and what is your business?
A. I live about four miles below here, and farm.
Q. Is this your railroad station?
A. Yes, sir, this is the nearest.
Q. Mr. Smith, state what you have observed as to the volume of travel going to the up-country points, and railroad connections, any personal experience you and your family have had?
A. Well, I have had a little personal experience,——

Mr. WILLCOX: We object to his personal experience, as irrelevant.

Q. Go ahead.
A. Well, some of my family has had a little more personal experience than I have. I have had a son who has been at Spartanburg for the last four years and he can't get from Latta the
57 same day. He always has to spend the night in Columbia.
Q. He might spend it in Sumter might he not?
A. Yes, I suppose he could; but he usually spends it in Columbia.
Q. Have you ever had any sickness in your family?
A. Yes, my wife's health has been poor and I taken her to Chick Springs just a short time ago, and I had the same experience.
Q. Had the same experience? You had to lie over in Columbia?
A. Yes, sir.
Q. Have you observed that other people suffer this same inconvenience, and that there are quite a number of them? Have you observed that, seen it yourself?
A. Yes, sir.
Q. Is the number of people that are inconvenienced quite a number?
A. Yes, there is a good many; yes, sir.
Q. A party desiring to catch train 32 or 35, I believe Dillon is the only place it stops?
A. Yes.
Q. At Dillon what do they have to do?
A. You mean from Latta, or from where I live?
Q. From Latta, here?
A. They have to drive through the country.

Cross-examination.

By Mr. WILLCOX:

Q. How far do you live from Latta?
A. Four miles.
Q. How far do you live from Dillon?
A. About seven; possibly I can get there in six.
Q. Coming to Latta to take 32 and 35, if it stopped here, you would have to ride four miles?
A. Yes, sir.

Q. In going to Dillon to take 32 and 35 you have to drive six?
A. By going through the woods.
Q. Well, by going—you could do it?
A. Yes, sir.
Q. Did I understand you to say that your son couldn't leave Spartanburg and get here the same day?
58 A. No, sir, I didn't say that.
Q. Well, I misunderstood you. I just asked you if you did say that. He can do that?
A. He can get from Spartanburg here in a day, but you can't get from here to Spartanburg in a day.
Q. Do you happen to know that the Coast Line doesn't run any train from Columbia to Spartanburg?
A. Well, I know the shortest route is on the Southern from Columbia and I think the Coast Line has a road right around there somewhere; right near there.
Q. Did you go on the Southern?
A. I went on the Southern from Columbia to Spartanburg.
Q. And that is the connection you are complaining of?
A. Is Columbia.
Q. The Coast Line takes you to Columbia all right, then?
A. Yes, sir.

Redirect examination.

By Mr. Woods:

Q. Mr. Smith, have you had any experience about getting tickets to make an up-country connection to Clemson College? State what it is.
A. I did last Summer. There were several wanting to go from this place, but we couldn't get any tickets.
Q. Didn't have any tickets on sale here?
A. No, sir.

Objected to as irrelevant.

Q. You had to go to some other point to buy your tickets?
A. Well, we 'phoned to a friend in Dillon to buy the tickets for us and bring them down.

Objected to as irrelevant.

Q. So that he bought those tickets at the Dillon office and they were paid for there?
A. Yes, sir, and we paid him for the tickets after we got on the train.

59 D. J. Dew, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods, and testified as follows:

Q. Where is your home and what is your business?
A. I am a farmer; live out five miles above Latta.
Q. On what railroad?

A. Latta Branch.

Q. Mr. Dew, state what you know about the railroad connections?

A. Beyond Columbia?

Q. Well, for points going out of Latta?

A. I have tried to get to Clemson College, and I had to lie over in Columbia.

Q. Have any experience about getting tickets here?

Objected to as irrelevant.

A. Yes, sir. I tried to buy tickets here last summer to Clemson College and couldn't get them to this place at all. I had to phone over and have them sent over from Dillon—three.

Q. Who was in the crowd?

A. Mr. E. B. Watson, a neighbor of mine, was one, and J. F. Bethea, I think, was another. Furthermore, there was a gentleman below here about five miles, Mr. Reeves, come into the office at the same time, to buy the tickets, and in the presence of three or four the agent here informed us that he couldn't wire for the tickets himself and have them sent over and pay him the money but we would have to sign the tickets in person. Mr. Reeves said he couldn't go to Dillon and therefore would have to postpone his trip to Clemson College,—which he did.

Q. So the tickets were not on sale at Latta?

A. No, sir.

Q. Have you had any other ticket experiences?

A. Yes, sir, I have had a little to Conway this year. It
60 is said to be a seaside resort down there near Conway and other stations have reduced rates to Conway.

Q. Any on sale here at Latta?

A. None, sir. I tried to buy a ticket to Conway on the reduced rate and could not buy one any further than Chadbourn. He sold me three tickets to Chadbourn and couldn't, or didn't, sell one to Conway when I asked him for one to Conway.

Q. In going to the up-country is it possible to get any of the Columbia and up-country connections more than once a day from Latta?

A. Only once a day, sir; in the afternoon.

Q. What does that involve? What do you have to do?

A. You have to go to Columbia and lie over or go to Sumter and lie over and spend the night and go next day. The trains leave there on the Coast Line and the Southern about the same time.

Q. Would the stopping of these fast trains obviate that difficulty?

A. Yes, sir, unless a change of schedule has been made recently.

Q. Have you observed that there is a considerable amount of travel that is discommoded by the present arrangement?

A. To my personal knowledge there is quite a number sir. A good many more perhaps I don't know of.

Cross-examination.

By Mr. WILLCOX:

Q. The only difference between the up-country connections that you describe is the difference between leaving here at night, 7 o'clock in the afternoon, and leaving here at 3.30 in the morning?

A. Well, sir, it is a difference of time and difference of hotel accommodations in either Sumter or Columbia; about twelve hours, sir.

Q. Well, that is the difference?

A. Both of them, yes, sir.

61 Q. The difference?

A. Yes, sir.

Q. In other words, if you want to go to the up-country you can leave here at 7 o'clock in the afternoon and go through to Columbia, changing at Florence?

A. Change at Florence and go through to Columbia and pay a hotel bill and you can go at 7 o'clock next day or 12, sir.

Q. If you left at 3.30 in the morning, if that train would stop here, you would change at Sumter?

A. Yes, sir, and go through to the up-country by 3 o'clock in the afternoon, to most any point; the same day you left.

Q. On that same connection you would make at Columbia provided you left here at 7 in the afternoon?

A. Yes, sir, on the same connection.

W. W. SELLERS, Called as a witness on behalf of the Plaintiff, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Mr. Sellers, what is your work?

A. Well, I am a State constable.

Q. Does your position give you a good opportunity to observe the traveling public?

A. Well, it does to some extent, sir.

Q. You are on and off the train a great deal, are you not?

A. Yes, sir.

Q. Is it your observation that a large number of people are discommoded by the present passenger accommodations at Latta?

Objected to as being leading and the application of a general result without the statement of fact.

62 Q. What is your observation, based on your knowledge?

A. I know if you want to leave here after this 7-o'clock train goes down in the evening, if you want to go by Florence anywhere you have to go to Dillon and take that fast train. I have done that myself, gone to Dillon and took the fast train and go to Sumter and connect on up, with the Columbia and as far as I wanted to go.

Q. That is your personal experience?

A. Yes, sir.

Q. Have you observed the experience of others, a very large number?

A. Well, anybody would have to do just like I do.

Q. Well, do a few have to do that or a large number?
A. Well, I think there is a good many people who have to do just like I do.
Q. And all people going to the up-country have to do what?
A. Leave here either on the 7-o'clock train or go to Dillon and catch that other train. Now, a man could lie over at Florence. He could go from here to Florence on the 4-o'clock train and stay until 8.05 and go on.
Q. Or he could go to Sumter or Columbia?
A. Yes sir, either one.
Q. And go to the up-country the same day?
A. Yes, he would get to the up-country the same day by doing that. The local train leaves Florence for the up-country at 8.05 in the morning.

Cross examination waived.

63 J. S. BETHEA, Called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. State in your own language what is your observation and experience about the matters under issue here, what positions you hold, and so on, and where do you live?
A. I live in the town of Latta. My business is kind of mixed. I am intendant of the town at present; president of the bank.
Q. State what your experience and observation is in reference to the passenger accommodations at this point?
A. Well, I don't consider them as good as we should have. They don't meet the demands of the people.

Objected to as an opinion of the witness.

A. Well, they are not then, I say.
Q. You observed that and state it of your own knowledge?
A. Yes, sir.
Q. State the facts, then, upon which your opinion is based?
A. Well, I will state we have a great many people here wanting to take that fast train and they have to go to Dillon. We have no way of getting out the evidence. I believe the evidence I can give has been brough out by other parties. I can only reiterate what has been stated. We have no way of getting to the up-country except by that evening train and we make no connection. We have got to stop somewhere—in Florence, Sumter or Columbia.
Q. Now, what about the line going through Sumter, Creston—from Florence, through Orangeburg, to Augusta?
A. Stay all night in Florence. I have had occasion to travel over that road once or twice in the last year. We have to wait for the fast train in Florence. There is only one train a day on that road.
64 Q. There is one train a day, and no connection from Latta for that train?
A. No, sir, none at all.

Q. Now, if this fast mail stopped here would passengers for points on that line get a connection?

A. Yes, sir.

Q. Go straight through, or not?

A. Yes, sir. The train from Florence for Augusta leaves after this fast train gets to Florence, the fast train over this road.

Q. Now, Mr. Bethea, state of your own knowledge as to the volume of travel here. What is your observation?

A. Well, the travel has increased considerably. We would have more from this point if we could get accommodations. A great many of our people have to go to Dillon that would board the train at this Place.

Q. Go to Dillon to catch what?

A. To catch that fast train. I don't know the numbers, don't keep up with the numbers.

Q. Do trains 32 and 35 do local work at Dillon?

A. They stop at Dillon.

Q. And take on and put off passengers?

A. Yes, sir.

Q. Is there a water tank at Dillon?

A. No, sir, I don't think.

Q. Is there a coal chute there?

A. Not to my knowledge.

Q. What about buying tickets here?

Objected to as irrelevant.

Q. What about buying tickets here? Have you had and experience and seen others have experience?

A. Yes, I have seen others and have had some myself. I tried to get a ticket here last winter beyond Florence and failed; couldn't get a ticket except to Florence,—local ticket.

Q. Do you know whether they keep mileage books on sale?

A. I don't know about that. I know you can't get a ticket to points on that road from Florence to Augusta.

65 Q. In going to the County-seat, what about you connections in going to and coming from the county-seat?

A. Well, we have to stay at Pee Dee down here about two hours in the morning.

Q. On that morning connection you have to stay at Pee Dee about two hours?

A. We take the Latta Branch here and go to Pee Dee, stay there about two hours and change to the Wilmington branch.

Q. Is it often you have to stay longer than that?

A. Oh, yes, sir.

Mr. WILLCOX: We object to that, because there is no complaint here about a failure to make a schedule.

Q. Coming back at night how long do you have to stay there?

A. Well, about the same time,—longer. I don't know. It seems to me it is about all night. That is a very disagreeable place to have to stop at down there. I don't know how long; quite a while.

Mr. WILLCOX: We object to the answer.

Q. But the only way you can get the connection from Marion to Wilmington is by stopping at Pee Dee?

A. Yes, sir.

Q. How many times a day can you go to Marion and how many times can you come away?

A. Once. Well, I don't know about the night connections. Twice in the day and night.

Cross-examination.

By Mr. WILLCOX:

Q. Would your conection with the county-seat, Marion courthouse, be improved by stopping 32 and 35 here—I mean the fast train at 3 o'clock?

A. With the county-seat?

Q. Yes?

A. I don't know that it would with the county-seat. I
66 don't know about the trains on that Wilmington branch, not exactly.

Q. If you would go to Pee Dee on the train that leaves here at 3 or 3.30 in the morning and wait there until 10 next morning to go to Marion, South Carolina, do you think that would improve the service to Marion?

A. How is that question?

Q. If you left here at 3 o'clock in the morning and waited at Pee Dee until 9 or ten next morning to go to Marion, would that be an improvement over the Latta Branch train that goes to Marion?

A. I don't think the Latta people want the train to stop for that connection.

Q. Would the service be improved between here and Marion by stopping 32 and 35 at this point?

A. I don't know that it would. I have answered that once.

Redirect examination.

By Mr. WOODS:

Q. Mr. Bethea, if a party leaving Marion in the afternoon—you say they have to wait down at Pee Dee nearly all night—wouldn't they be convenienced by being enabled to run into Florence and come on here on 32, get supper there?

A. They would coming this way, yes, sir; from Marion.

Recross-examination.

By Mr. WILLCOX:

Q. Can't you leave Marion in the afternoon and have the glorious privilege of riding to Florence and getting supper and then leaving Florence and coming on to Latta on the Latta Branch train?

A. Yes, sir, you can do that on the Latta Branch. You have the preference between lying over at Pee Dee instead of going to Florence.

67 Redirect examination.

By Mr. WOODS:

Q. Suppose you do desire the glorious privilege of running into Florence, can you get a ticket to Latta for the same price as if you wanted your supper?

A. No, sir, I would have to pay for it.

Q. How many miles is it from Pee Dee to Florence, do you know?

A. Not exactly; about 15 miles, I think.

Q. So you would have to pay for that extra in addition to your supper?

A. Yes, sir.

By Mr. WILLCOX:

Q. Would you not have to travel the same number of miles and pay the same mileage to ride to Florence on 32?

A. If I was to go from Marion to Florence?

Q. Yes?

A. Yes, sir.

Mr. WOODS:

Q. Wouldn't riding from Florence to Latta on train 32 save you making a transfer at Pee Dee and wouldn't it be a more comfortable train?

A. Yes, sir.

D. McK. BRADDY, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Where is your residence, and what is your business?

A. I am farming. My residence is here in this town.

Q. Mr. Braddy, state from a personal standpoint and from your observation whether the passenger accommodations at this point are sufficient?

Mr. WILLCOX: We object to his opinion.

Q. State what you have observed and what you know.

A. I don't think they are sufficient to take the travel as the people would like; because there are a great many people come here from up the road here, the Latta Branch. They have to go to Florence to get on the fast train going north. I was up at Clio some
68 time ago and there was a gentleman said he had to go north and would have to go to Florence to take the fast train; costs him more. He goes to Florence and then comes right back here—two dollars short—to get on the road, to go where he wants to go. That's the first thing he does—to throw away two dollars. If you are going south, coming from that point or leaving here, you have got to go to Dillon to take the fast train to make the connection to go where you have started. A man don't want to be honeyfuggled along on the railroad, you know,—waiting for trains; he wants to go through when he has got business. We people here are like the

people where you live, you know (addressing representatives of defendant railroad company); we like to be at the starting point and go through.

Q. Where did you formerly live?

A. I lived four miles above Little Rock on the Bennettsville road; well, it is the McCall road, leading to Dillion, Clio. There I noticed frequently people passing on the road from those three points to go to Dillon to take the fast train to go north; those mill men there, for instance, and some from Clio; driving through the country, 25 miles, to take the fast train. I knew the parties, stopped them there at my house, and I asked them why they didn't go to Clio and take the train there. "Well, we would, but it don't stop there; we have to drive further to take the fast train." Numbers of times I have seen that, last year and before. And it is very frequently the case here where they come in on that road and go to Florence to take the fast train going north, or go to Dillon.

Q. You say that is frequent?

A. Yes,—well, I heard a gentleman say on the train coming up the other day that he knew it was frequently the case.

69 There was a gentleman here that lived in this town all the year that went to Norfolk the other day. He had to go to Florence to strike the fast train, with his family.

Mr. WILLCOX: We object to the entire answer of the witness as not responsive to the question, which we have already objected to as irrelevant. We now object to the answer as irrelevant, and will ask that it be stricken out. In addition, we object on the ground that it is based upon hearsay.

Q. Has any one connected with the railroad, in answer to a question, told you anything about the volume of travel from that country to go on this train?

Mr. WILLCOX: We object to that.

A. Yes, he said it was very frequent.

Q. Who was it?

A. Captain Fitts, the conductor on the Latta Branch road.

Objected to as being entirely hearsay.

A. We were speaking casually along and he just mentioned it, about a gentleman going to Florence to take the fast train; he said he hated to do anything like that, throw that much money away, but that was his only chance. I asked him, "Isn't that the case right frequently?" He said yes, often the case. That was the conductor on your road. I just asked him the question in such a way he couldn't say no. He had to say what was the facts.

Mr. WILLCOX: Having objected to the question, we will object to the answer and ask that it be stricken out, as entirely hearsay and an undertaking to introduce the testimony of an alleged agent of the principal without proving the agency or any authority within the scope of his agency to make any such statement.

70 Q. What position does Capt. Fitts hold?
A. He is conductor on this Latta Branch road.
Q. And what road does that belong to?
A. Belongs to the Atlantic Coast Line.
Q. How long has he been conductor to your own knowledge?
A. I couldn't tell you; I suppose eight or ten years, anyhow, if not longer.
Q. Has he received your money and acted as conductor on that train?
A. Yes, sir.
Q. Then you know that he is an employé of the company?
A. I do.

Cross-examination waived.

E. B. BERRY, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:
Q. State your residence and occupation?
A. I am in Latta a good part of the time, sir. My residence I suppose is about five miles out in the country. My business, mainly, is in Latta.
Q. You stay in Latta a good part of the time, don't you?
A. Yes, sir.
Q. State of your own knowledge your personal experience and what you of your own knowledge know is the experience of the public about these two trains?
A. Well, of my own experience, I attempted some time ago in taking a trip to south Florida to get a mileage book at this office. The agent here promised to wire to Wilmington for one. I failed to get the mileage book and had to pay local fare over to Florence, and there bought the mileage book.
Q. Mr. Berry, are mileage books as a matter of fact on sale at this office? Have you or your friends ever been able to obtain them?
A. No, sir, and we have applied for them more than
71 once.
Q. What about coupon tickets?
A. I could only answer that from hearsay.
Q. Now, Mr. Berry, state about the connections going to different points in the State. You know it just as well as I could bring it out with questions, and your observation as to the amount of travel that would be accommodated by these two trains?
A. There is a good deal of travel would go from this place if we could get tickets to board these fast trains.
Q. Is it not a fact that there is a great deal of demand for that now? Do you see parties frequently going into Florence and Dillon?
A. Yes, sir, and traveling men, especially, very often make personal complaints to me.
Q. All right, sir. State anything you know of your own knowledge.
A. I know since this fight has been on between the people and

the Coast Line company a good many traveling men have expressed to me their hope that we would win, in order for them to reach Latta without going to other points and spending the night and coming back; many a time taking a drive through the country to come from Dillon over to Latta; loss of time and expense of hotel bills.

Q. Parties getting off of train 35 at Dillon, then, would have to stay there how long?

A. They would have to spend the night at Dillon or drive over during the night, as some do do, or they would have to pay their hotel bills and come down on the Latta Branch train next morning.

72 Q. State what would be the experience of a person for a train below Charleston to get into Latta? There is a local, as I understand, from Charleston to Florence you can come to Latta on; how about below Charleston—Beaufort and Barnwell and towns down in there?

A. I couldn't answer that of my own knowledge.

Q. Well, points on the Charleston road?

A. We would get into Florence and then we could take the Wilmington train to Pee Dee and there take the Latta Branch train to Latta.

Q. But will they sell you a ticket to Latta?

A. No, sir.

Q. State what has been the experience of people buying tickets into Latta, if you know, if you have had any experience in that line, or seen it?

A. Well, I knew what would be the result and therefore I didn't ask for one. I have had other parties to tell me they couldn't buy them.

Mr. WILLCOX: We object to that.

WITNESS: I supposed that. I didn't know of my own knowledge. I would like to say this: that we only have two trains a day from Latta that offer anything like decent accommodations as far as the appointments of the coaches we have to ride in are concerned. We can only take the 10.38 train going north or the 6.58 train going south. Outside of that, we have to go on the Latta Branch train—which I think any decent man would object to riding on.

Q. State the conditions on that train as to water and seats and so on.

A. The seats are very rough and you board it at night at Pee Dee and I have gotten on there when I could scarcely see my way to find a seat. It is pretty much Mr. Bethea's idea, as I caught it, of a caboose.

73 Q. So this train that runs backwards and forwards so much has very poor accommodations?

A. Yes, sir, very poor; and especially at Pee Dee, where we have to board it at night.

Q. Is it a very uncomfortable train?

A. It would be if you had to ride any distance, and it is not

comfortable any distance; especially so when you have just gotten off a good train a few minutes before; the contrast is very unpleasant.

Q. Anything else that suggests itself to you?

A. No, sir. I would say that this connection from here to Marion, which I understand is altogether local accomodations—that is what we are driving at; the connection between here and Marion is most miserable now. In fact, very few of our people go to Marion now, for the reason that they can drive to Marion in about the same length of time they would have to lie over at Pee Dee. Very few people now take the train to Marion, and all took the train before this present schedule was given. And this present schedule was given us as a kind of compromise when we first began to agitate this matter of stopping the fast train. So if there were no fast trains I suppose we would have the same connection to the county-seat we had before.

Q. The accommodations would be the same, 32 and 35 wouldn't make any difference as far as going to Wilmington is concerned?

A. No, sir.

Q. Would it make any difference on the Charleston line? Would it accommodate passengers going from here to Charleston any more, give them additonal accommodations?

A. No, sir, I can't say that it would.

74 Q. Where does train 35 go? Does it go through Charleston? Have you ever ridden on it?

A. Yes, sir, it goes, I believe, as far as the junction.

Q. Doesn't it go into the station in Charlesion?

A. Yes, sir.

Q. Then would it not give another train to Charleston a day?

A. You mean if the schedule of the Latta Branch——

Q. No, sir, if train 32 and train 35 stopped here?

A. Oh, yes, sir; yes, sir.

Q. And has your observation been that the travel between here and Charleston is light or heavy? Do many people go?

A. Well, the business is very heavy, especially at some seasons of the year; and for traveling men it is quite a thoroughfare.

Q. It would give another train into Charleston, then?

A. Yes, sir.

Mr. WILLCOX: I didn't care to interrupt Mr. Berry; I wish to state some objections. I wish to object to the questions to and the answers of Mr. Berry in the following particulars: As to the matter of purchase of tickets at Latta, which we regard as irrevelant; to the hearsay testimony or secondary evidence as given by Mr. Berry; as to the insufficiency of the equipment of the accommodations on the Latta Branch, which we regard irrelevant as to any issue before the Court; and as to the Marion connection.

Cross-examination:

Q. The train that passes here at 7 o'clock in the afternoon goes through to Charleston also, doesn't it?

A. Yes, sir.

Q. Pullman on that train?

A. Yes, sir.

75 Q. Stopping 35 at Latta would simply give you an additional train to Charleston, would it not?

A. Yes, sir, give an additional train.

Q. It would simply mean that passengers instead of leaving here at 7 in the afternoon to go to Charleston could have the additional privilege of getting up at 3 o'clock and taking the train for Charleston?

A. Yes, sir, for the Charleston connection I think that is true.

Q. In addition to that he can leave in the morning on the Latta Branch and make the Charleston connection?

A. Yes, sir.

J. L. Dew, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. State your residence and your business.

A. Well, I live here, in this town, and I have a store and mill business and a farm and I am postmaster here. That about covers my occupations.

Q. Now state what experience you have had with reference to buying tickets.

A. I have had considerable trouble buying tickets. I wanted to go to Washington—I don't know exactly the time—and I tried to get a ticket here. The rates were advertized to Washington and return at, I think, ten dollars from all points in the eastern part of South Carolina, and I went to the agent and tried to get a ticket and he said he didn't have any, and I took my wife and went over to Dillon and paid my fare over there and took a receipt from the conductor and went to Dillon and bought tickets there and went on to Washington. And coming on home I paid my fare from Dillon and took a receipt for it.

76 Q. Do you know whether mileage books are on sale here?

A. I don't know, sir; one time I tried to get a mileage book here and I gave them notice for two weeks in advance and couldn't do it, and I went to Florence and got it; and I told the agent here I thought it was justice to me to let me take the mileage out of my book there, and he agreed to it and the conductor agreed to it, and after I bought it at Florence I tore out the mileage and paid the conductor.

Q. But, as a matter of fact, your purchase went to the credit of the Florence office?

A. Yes, sir.

Q. You had to buy your tickets at the other points?

A. Yes, sir.

Q. State any experience you had and know of your own knowledge about Columbia connections?

A. I wanted to go up to Chick Springs the other day and sent my wife up there and my sister and we had to go over to Columbia and stay there all night when if we could have left here on 35 we could have gone to Columbia and made close connection and gone on.

Q. Gone in the same day?

A. Yes, sir.

Q. What about the Augusta line, the line going through Orangeburg?

A. I haven't traveled over that line in two or three years. I don't know much about that connection over there.

Q. State whether it is a fact that you tried to get a ticket validated in Charleston to come to Florence on 32 and could not at Charleston?

A. I can give you the facts of that case, and let you consider it. I wanted to go to Jacksonville and I bought a return ticket to Charleston and the Charleston ticket, I think, was a ten-day ticket and I went to the agent in Charleston and said to him, "I want to
77 go to Jacksonville and I can't possibly meet my connection only by 32 from Jacksonville to this point and my ticket goes to Latta and I want you to validate this ticket as far as Florence." And he refused to do it. I had to pay from Charleston to Florence.

Q. In other words, a passenger in Charleston if he happens to miss this slow train can't get out on 32, which leaves about an hour and a half later, I believe?

A. No, sir, not if he has got a ticket for Latta. He can't get it validated, or have his ticket made good. Or he refused to validate my ticket.

Q. So if a person misses train No. 50—which is the Wilmington train—happens to get to the station late in Charleston, he either has to pay his fare to Florence, local fare to Florence, or lie over in Charleston until next night?

A. Well, in this case that was the last day of my ticket. You see I could have stayed over in Charleston and come out on another train, but the trouble with me was that was the last day of my ticket. I still have my ticket; I still hold that ticket. I went to the railroad ticket agent at Wilmington and asked him to redeem it, told him the circumstances, and he refused to do it. Then I asked him to redeem the receipts. I told him he had tickets advertized to Washington, good for any point east of Columbia, at ten dollars and return, and I said, "Now I went to the ticket agent at Latta and I couldn't do it and I had to pay my fare to Dillon and back and here is my receipts." I have those receipts right now. And I tried to get him to redeem those and he refused to do that. I think I have about six or seven receipts of that kind.

78 Mr. WILLCOX: Please note our objection to the questions to and answers of Mr. Dew, in that they refer to the purchase of tickets to and from Latta, which we regard irrelevant.

Q. State about any sickness in your family and an attempt to get put off here.

A. I was in Chattanooga and I notified Mr. Emerson in Wilmington—that has been about three years ago, I think; I don't remember the date—that I would leave Savannah at a certain time on 32 and I had a ticket for Latta, too, direct from Lexington, Kentucky, and I asked permission to have 32 put me off at Florence and to notify Mr. Heard at Florence whether he would do so. And when I went to Mr. Heard at Florence Mr. Heard said he was very sorry but he

had a letter there for me and I took the letter and Mr. Emerson said he was very sorry but he could not accommodate me.

Q. There was sickness in your family at the time?

A. Yes, sir, and I had a ticket for Latta and I got on the train and come on; I had the courtesy of the company to put me off.

Q. He did put you off.

A. Yes, sir. They threatened to put me off at Fayetteville, and Pee Dee, and I told them to put me off where they pleased—and they brought me on here.

Q. Anything further?

A. I was in Covington, Kentucky, and I came by the way of Richmond and struck train 35 at Richmond. I had been off several weeks from home and in passing by here I come by my own door and they carried me over to Florence and I had to pay my way to Florence and come back next day. If train 35 had stopped it would have saved me a hotel bill and railroad fare, too, to Florence and back.

79 Mr. WILLCOX: We object to this last testimony on the same ground as to former testimony of witness.

E. B. BERRY, recalled for Plaintiffs, was examined by Mr. Woods and testified as follows:

Q. Mr. Berry, it seems to be a fact that there are some ten or twelve trains that stop here for passengers a day, including two freight trains. I would be glad for you to explain the accommodation that those trains afford.

A. Well, sir, as we see it here, we have only two passenger trains a day which stop here—one going north, and one south. It is true the Latta Branch train stops here, with very poor equipment. Some of those trains mentioned on the stand this morning are simply local freight trains.

Q. Do they have any certain time to come to Latta?

A. No, sir. I remember on one occasion chasing one up and down there, expecting it to leave, for quite a number of times; and the time it did leave I didn't think it was going, and so I didn't get off at all. So, as we regard it, we have only two passenger trains stopping at this place daily.

Q. That is, one each way?

A. Yes, sir.

Q. Describe the kind of coach that is furnished for the accommodation of passengers on this Latta train and the freight trains.

A. Well, sir, we have in there very poor seats. They seem to be that—needing repair. And I think they used to have a rusty tin cup to drink water from, and the passenger department has a very delapidated appearance generally. In fact, I never see anything like this coach at all on the main-line. When I say "on the main-line," I mean I never see it attached to trains that are doing a regu-

80 lar passenger business.

Q. What about the coaches on the freight trains—Mr. Bethea called them "cabooses"?

A. I think they are what we all call a caboose.

Q. Describe what sort of coach it is and what sort of accommodations are on it.

A. The one I rode on from Dillon down here some time ago was an open car with a stove in one end of it—two or three broken chairs. I remember sitting in one between two doors as they opened like an ordinary horse car.

Q. You mean the doors opened on the sides like a baggage car?

A. Yes, sir, and I sat in between to get the breeze—like I would in a chair over here.

Q. Any accommodations for water—light—windows in it?

A. I don't remember distinctly. This was in the daytime when I came over the road. That, I suppose, is one of these passenger trains that were spoken of this morning.

Q. On these particular trains that were carrying passengers were there separate accommodations for white people and colored people, or only one coach?

A. Only one coach that I saw; I didn't see any separate apartments.

Q. How about the Latta Branch, are there separate apartments furnished for whites and blacks?

A. Yes, sir.

Mr. WILLCOX: We enter the same objection to the testimony as to the equipment of the Latta Branch—because not involved in the controversy.

W. W. GEORGE, called as a witness on behalf of the Plaintiffs, having first been duly sworn was examined in chief by Mr. Woods and testified as follows:

Q. Where is your residence and what is your occupation?

A. Latta is my place of business.

81 Q. What business are you engaged in?

A. Hotel and general merchandise and wholesale grocery.

Q. As keeper of the hotel do you come intimately in contact with the traveling public?

A. Well, I do with a majority of the traveling public.

Q. You see a great deal of it, do you not—that is, the traveling public? You see a great deal of the traveling public?

A. Yes, that comes to Latta; I mean the majority of the traveling public that comes to Latta.

Q. What do you say from your own experience and your own knowledge as to the accommodations furnished here? What do you say as to the passenger accommodations at Latta?

A. It is very poor.

Q. Are sufficient accommodations furnished, and if not, why not?

A. It is not.

Q. Why do you say that?

A. Because we have lots of patronage here that we have to send to Dillon to meet that fast train. I send a man or two every week to meet that 9 o'clock train—send them [illegible]re. I have a horse and buggy and they stop over here and get me to send them from

here to Dillon. Then I hear lots of complaint about their wanting to get off here and can't get off. We have men to get off at Dillon and take the Latta Branch and come down here.

Q. Then there is among the traveling public very general complaint because there is not a double-daily schedule?

A. Yes, sir.

Q. Would the cause of the complaints you have heard be removed if 32 and 35 stopped here?

—. It would.

Mr. WILLCOX: We object to the questions and the answers of the witness in his undertaking to express an opinion not based upon facts.

82 W. G. PACE, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. What is your place of residence and occupation?

A. I claim Danville, Va., as my home, sir.

Q. Where are you now residing?

A. I stay in Latta in the tobacco business.

Q. You have been residing here several years, have you not?

A. Yes, sir.

Q. And you are in the tobacco business?

A. Yes, sir.

Q. Mr. Pace, is it the fact that there is a great deal of travel from one point to another among the tobacco men?

A. Among the head men, yes, sir.

Q. Is it a fact that the tobacco industry is very much hampered by not having double-daily passenger service here?

Objected to as leading.

Q. What is your view about that?

A. Well, I think, for instance, Mr. Hickey would come here oftener if he could use this fast train.

Q. Who is Mr. Hickey?

A. He is my superior.

Mr. WILLCOX: Objected to as being entirely a matter of opinion, inasmuch as the witness "thinks" Mr. Hickey would give better attention to his business if he could come here oftener.

WITNESS: As a matter of fact, when he does come I always have to carry him over to Dillon, as he invariably uses that train. I have never heard Mr. Hickey say that himself, but I just suppose that to be the fact.

Mr. WILLCOX: Therefore I submit that the witness knows nothing about it; it is simply his opinion.

Q. Of your own knowledge state what is your observation as to the passenger accommodations, and whether you have heard many complaints, and your own experience?

83 A. Well, my own experience in coming from Danville here, and not only myself, but my family, we have had to

go to Dillon, when if that train had stopped here it would have been very much more convenient. I came very near going in the ditch there in going for a young lady. She had a ticket from Danville here, and the conductor put her off at Dillon—and it was in the night, and raining.

Q. Have you heard much complaint as to the passenger accommodations?

A. Yes, sir.

Q. Would the cause of that complaint be removed if these two trains stopped at Latta?

A. I think so; certainly.

Mr. WILLCOX: We object to the opinion of the witness. We object to his stating that a cause of complaint would be removed, without stating the facts to base it upon.

Cross-examination:

By Mr. WILLCOX:

Q. What time do you leave Danville to come to Latta, South Carolina?

A. Well, the most pleasant time to leave would be between—I don't remember the exact time, about 10.45, I think, so as to catch this train out of Greensboro down by Sanford that connects at Fayetteville.

Q. With what train?

A. I don't know the number of the train.

Q. What time does it get here?

A. Would connect with 39, but if that train from Greensboro is twenty minutes late, or, certainly, half an hour late, they invariably miss this train if it is on time.

Q. Therefore, your most pleasant route from Danville is to leave at ten, in the neighborhood of ten, and connect at Fayetteville with 39?

A. Yes, sir—connect at Greensboro first.

Q. Well—Connect at Fayetteville?

A. Yes, sir.

Q. And the only inconvenience you are subjected to is that
84 that train may be late?

A. Frequently, yes, sir.

Q. That is the only inconvenience you are subjected to?

A. Yes, and 39 will never wait for it, is my experience.

Q. That is the most pleasant route?

A. Coming from Danville, yes, sir.

Q. And the best connection, and your best trip to Latta?

A. Yes, sir.

Redirect examination.

By Mr. WOODS:

Q. To whom does the line from Sanford to Fayetteville belong? What system is that?

A. Coast Line, I think.

Q. So the Coast Line does not wait on its own train, and you frequently miss that connection?

A. About 6 times out of 7.

Q. You say, Mr. Pace, that that connection is missed at Sanford right often?

A. At Fayetteville.

Q. You don't know how often?

A. Well, my wife, my family, have come down here, made three trips to Danville this year, and we have had a relative, the young lady I spoke of meeting in Dillon—that is only four trips from Danville this year, and they missed each time. That is a bigger percentage than six out of seven.

Recross examination.

(By Mr. WILLCOX:)

Q. Do you mean to say as a fact that that train from Sanford to Fayetteville misses the 39 connection six times out of seven?

A. That has been my experience, sir; yes, sir.

Q. Covering what period?

A. I have missed it frequently in the last three or four years, but every time since January the first.

Q. But kindly answer my question. I asked you if it had been your experience that it missed it six times out of seven?

A. Every time I travel it.

85 Q. Then, you don't mean to state that—that it misses it six times out of seven?

A. Oh, comparatively. I meant comparatively.

Q. How many times did you make that trip?

A. Oh, I haven't been up there so frequently myself, but my family have come down here four times since January the first.

Q. How many times has the train missed the connection?

A. Each time.

Q. Could you give the dates, by any reference?

A. Well, I might get it for you.

Q. I wish you would look it up a little later—not today, but a little later.

A. Yes.

Q. And tell me the four days you undertook to come here and that train missed connection.

A. One time I remember being on myself, with my mother and my wife, in January.

Q. What train did your people come in?

A. On this fast train; got off at Dillon—snow and ice; went to the hotel and waited until next morning; had to build my own fire.

Q. So you think if Mr. Hickey could come on that train 35 he would come down here oftener?

A. Oh, yes; he has told me so once or twice.

Q. You think his business here is not of sufficient importance for him to come himself unless he can come on that train?

A. Well, he either comes here or comes to Florence. Of course personally I would rather for him to come here.

Q. So, by reason of the inconvenience, you go to Florence?

A. Yes, and when he does come here I have to take him to Dillon every time to get that train.

Q. Do you mean to state that by reason of the fact of
86 your going to Florence he can't come to Latta?

A. I think he would naturally come here as much as before; naturally would.

Q. Why doesn't he come on 39?

A. He usually comes this way.

Q. Why doesn't he come on 40?

A. He does when he does come—has to.

Q. Doesn't that give him sufficient time to attend to his business?

A. Yes, but some times he could double up his trip. Frequently he gets off at Dillon, you know, and comes here, and instead of staying here, if he is going back north, he has to be driven to Dillon.

Q. When he goes to Dillon can't he drive to Latta?

A. Oh, yes.

Q. Can't he come on the other train, the train that stops at Latta, from Dillon?

A. What? 39?

Q. Any train?

A. Oh, yes; he could; but I am speaking of the convenience of it.

Q. So he simply prefers to get off here at 3 o'clock in the morning?

A. I am speaking of the train going north.

Q. Can't he come up from Florence on the Latta Branch?

A. Never has.

Q. Couldn't he do so?

A. Yes.

Q. But still he has a preference for the other train?

A. Yes, he usually travels on that.

Q. In other words, he has simply a fondness for that train?

A. Yes, sir.

Q. And doesn't care to ride on the Latta Branch train? Is that the idea?

A. Yes, I suppose so; he never does.

87 J. S. BETHEA, recalled for the plaintiffs, testified as follows:

(By Mr. WOODS:)

Q. Have you ever had any experience with that Fayetteville connection we were talking about?

A. My wife——

Objected to as irrelevant and also as hearsay.

A. This is to my knowledge a fact. My wife missed connection there last week and my sister the week before.

Q. That is on the train from Sanford to Fayetteville?

A. Yes, sir.

Cross-examination.

(By Mr. WILLCOX:)

Q. Where was your wife delayed?
A. Fayetteville.
Q. Where was the train first delayed?
A. I don't know about that. She was at Mt. Vernon. She was on her way home. She got to Fayetteville too late for that train and had to stay there.
Q. Do you know whether the train was delayed in the beginning?
A. No, sir, I don't know that.
Q. Don't you know that the train was delayed up on the Southern railroad somewhere?
A. No, sir, I don't know that.
Q. Do you mean to say that between Sanford and Fayetteville the train lost time?
A. I don't know that.
Q. The only thing you do know is that the train did not make that connection at Fayetteville?
A. That is all.
Q. And you don't know the reason of that?
A. No, sir.
Q. What date was that?
A. That was about last Thursday was a week ago. I don't recollect the day of the month; about the 12th or 13th, wasn't it?
Q. You are sure it was last Thursday——
A. No, this past Thursday. I am thinking about the other case—of my sister. That was the week before.

88 M. H. GARRETT, called as a witness on behalf of the plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Mr. Garrett, in what business are you engaged, and where?
A. I am in the warehouse business, at Latta.
Q. What sort of warehouse?
A. Tobacco warehouse.
Q. State, Mr. Garrett, whether in your opinion there are sufficient passenger accommodations furnished the citizens of Latta—that is, what you have personally experienced and have observed from the experience of others, and if you don't think sufficient accommodations are furnished, why not?

Objected to as a matter of opinion, not based upon any statement of fact.

A. No, sir, I don't think we have sufficient accommodations.
Q. Why?
A. For the lack of more passenger trains, or more trains to stop.
Q. Have you ever been inconvenienced personally by not having this double-daily service?
A. Not recently.

Q. Have you ever been?
A. Yes, sir.

Mr. WILLCOX: We object to any statement of personal inconvenience, as irrelevant to the facts.

Q. State how that inconvenience arose?
A. I could not make my connections and would have to wait for another train.
Q. Couldn't get your connections?
A. No, sir.
Q. What has been your observation—that is, not what you have heard, but what you have observed yourself and know of your own knowledge—as to the inconvenience to others?
A. Well, sir, my observation is they are right much inconvenienced.
89 Q. Is your observation that there is a considerable amount of travel for those two trains from here?
A. Yes, sir.

Mr. WILLCOX: We object to the opinion given by the witness, not based upon statement of fact, and that the question and answer is irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. What two trains?
A. These fast trains; I don't know the numbers. One passes here at night somewhere not far from 9 o'clock.
Q. What do you mean by people being inconvenienced by not being able to go on those trains?
A. They have to pay extra fare to ride down to Florence and ride back here, or hire a conveyance to go to Dillon.
Q. How many people are inconvenienced a week?
A. I don't know, sir; a right good many.
Q. You wouldn't undertake to say there are a good many?
A. Yes, sir, I would.
Q. Would you undertake to say there are two a week?
A. Yes, sir.
Q. Ten?
A. I don't know. There is some difference between two and ten.
Q. Eight?
A. I don't know.
Q. Six?
A. I don't know.
Q. Four?
A. I think so.
Q. You are willing to fasten your mind that there are as many as four?
A. I am satisfied there are that many.
Q. Why are you satisfied there are a certain number—four?

A. I didn't say I was certain there were just four; I say I am satisfied there are that many.
Q. Why?
A. From hearing people talking.
Q. Then, from hearsay?
A. Yes, sir.
Q. Without any particular fact?
90 A. Yes, sir, I don't think people would talk unless they had some reason for it.
Q. You don't think people find fault unless they are justified in doing so?
A. Oh, yes, sir; I am aware that they do.
Q. Your opinion is not based on any certain knowledge—just pure hearsay?
A. Just what I hear them say.
Q. Just pure hearsay?
A. Yes, sir.

J. E. HENRY, called as a witness on behalf of the plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Where is your place of residence, and in what business are you engaged?
A. Latta is my place of residence and I am in the live-stock business.
Q. State of your own knowledge whether a great many people come to you to hire teams to catch these two fast trains at this point, whether people are hunting for teams?
A. Well, yes, sir, I have a good many calls for teams.
Q. For the purpose of catching trains 32 and 35 at Dillon?
A. Well, I don't know them by number. This fast train going north at 9 o'clock——
Q. The two fast trains we are talking about?
A. Yes, sir.
Q. That fast train passes what time in the morning?
A. I suppose about half past two or three o'clock, sir.
Q. Then from your own knowledge and from people coming to you to hire teams would you or not say that a great many people are inconvenienced by the failure of these trains to stop?
A. Yes, sir, some are, I know. I couldn't say how many, but there is hardly a week but what I have as much as one or two calls for teams to go to Dillon.
91 Q. Are you engaged regularly in the livery business?
A. Not in the livery business at all—but I am called on.
Q. Is there a stable in the town engaged in the regular livery business?
A. Yes, sir, two.
Q. Two stables besides your own? And they come to you to get teams?
A. Yes, sir, I have been called on very often for teams, and I have been put to a good deal of inconvenience myself.

Q. Tell about it.

A. I have gone to buy stock several times since the first of September, to Norfolk and Richmond and Atlanta, and I have to drive over to Dillon to catch one of those trains.

Q. You can't get your connections without going on those trains?

A. No, sir; and coming back from the north I have to stop over at Dillon in the morning before day and wait for the Latta Branch train to come down.

Mr. WILLCOX: We object to the testimony of this witness as hearsay and as an expression of opinion not based upon a statement of fact.

Cross-examination.

(By Mr. WILLCOX:)

Q. Number 40 makes connections for Norfolk, doesn't it—the train in the morning, passing here about ten o'clock in the day, or eleven?

A. Yes, sir, I think so.

Q. Makes connection for Norfolk and Richmond, through train for Richmond?

A. Yes, sir.

Q. Do all the people who hire teams to go to Dillon inform you of the object of their trip to Dillon?

A. No, sir, not always, but some of them do.

Q. In going to Dillon it is always that they desire to take the fast train?

A. No, sir, not always.

Q. The only thing you know is that several days out of a week you hire teams——

92 A. No, sir, I don't hire teams at all. I don't do any livery business. I am only called on for them, but I don't furnish them.

Q. So, two or three times a week you are called on for teams?

A. Yes, sir.

Q. Isn't it a fact that very frequently traveling men work two towns in one day—Dillon and Latta—so near together?

A. I suppose, so; yes, sir.

Redirect examination.

(Mr. WOODS:)

Q. Mr. Henry, Mr. Willcox made it appear you thought you got the Norfolk and Richmond connections by taking train No. 40. If you take train No. 39 coming out of here in the afternoon do you get the connection for out on the Augusta branch, that is, the road running south of Florence, running through that way? Do you get that connection?

A. I don't know any of these trains by number.

Q. I mean the train passing here at 6.58 in the afternoon?

A. No, sir, you have to stop at Florence until 3.45 the next morn-

ing. And I have made the trip from here to Dillon several times when the roads were almost impassable with a buggy.

Q. To make that connection and catch that southbound train?

A. Yes, sir.

Mr. WILLCOX: We object to the impassibility of the roads where it was the duty of the County to keep them up.

E. T. MCCUTCHEN, called as a witness on behalf of the plaintiffs, was examined in chief by Mr.. Woods and testified as follows; having first been duly sworn:

Q. State your place of residence and business.

A. Well, we live here and do a livery business.

93 Q. Are you in partnership with any one?

A. Yes, with my father.

Q. State whether in your opinion sufficient passenger accommodations are furnished the people of Latta, and if you say not, why not,—your reasons?

A. Well, I don't think so for the simple reason in a good many cases we have to carry people to Dillon to meet 32, going north, at night.

Q. Do you have to go over to Dillon to meet people coming on 35?

A. Well, I have once or twice.

Q. Now, Mr. McCutchen, is it quite often, or just occasionally, or seldom, that people come to your place for teams to catch these through trains?

A. Yes, a good many people come there, and a great many of them we have to turn away, I can't accommodate them.

Q. You haven't sufficient teams to accommodate them?

A. Yes, several times I could not accommodate them; more than half a dozen times.

Q. Was that due to the fact that you did not have the teams, or the teams were all out?

A. Well, it was due to the fact that the teams were out.

Cross-examination.

(By Mr. WILLCOX:)

Q. You say once or twice you have had to meet 35 at Dillon?

A. Yes, sir.

Q. Well, once, or twice?

A. Yes, sir.

Q. Which?

A. Twice, I think; I am not positive.

Q. Within what time?

A. Well, within the last twelve months.

Q. Within twelve months some passenger wanted to get off at Dillon and come to Latta and you had to furnish the team?

A. Yes, sir.

Q. Did you ever live at Lake City?

A. Yes, sir.

94 Q. Which is the larger, Lake City or Latta?

A. Well, I think Lake City is the larger; very little, if any, though.

Q. Does 32 stop at Lake City?

A. I can't say.

Q. What is your recollection?

A. They didn't when we were there.

Q. Are you acquainted with the county-seat, known as Kingstree?

A. Yes, sir.

Q. How much larger is that than Latta?

A. Kingstree is very little larger than Latta.

Q. Larger, though?

A. Well, it may be a little.

Q. Larger than Lake City?

A. No, sir, I don't think.

Q. Kingstree is not larger than Lake City? Do trains 32 and 35 stop at Kingstree?

A. I can't say; I don't know.

Q. When you stayed in that section of country?

A. I don't know that.

Redirect examination.

(By Mr. Woods:)

Q. Do 32 and 35 stop at any point between Charleston and Florence for the taking on and letting off of passengers?

A. I don't know; can't say, sir.

Q. You lived in Williamsburg County, did you not?

A. Yes, sir.

Q. What size place was Lanes?

A. I don't know what size place Lanes is.

Q. Is it as large as Latta?

A. I couldn't say, sir, whether it is or not.

Q. You don't know anything about it?

A. No, sir.

Q. Well, I will ask you this question: Are either Lake City or Kingstree railroad junctions?

A. No, sir.

Q. Is Latta?

A. I think so.

95 J. H. Wharton, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Townsend and testified as follows:

Q. Mr. Wharton, you are a member of the Board of Railroad Commissioners?

A. Yes, sir.

Q. How long have you been a member of the Board?

A. About four and a half years.

Q. You acted in investigating the complaint that was made to

the Board when request was made for the stoppage of these two trains in question here?

A. I did.

Plaintiffs offer in evidence the following letter:

LATTA, S. C., 2-23-1904.

Hon. Railroad Com., Columbia, S. C.

DEAR SIR: Enclosed find petition, which we would thank you kindly to give your immediate attention and consideration.

We learn that if your Board think it will be of any service, we can get all the stations between Latta and Clio to send them as they are anxious for this train to stop—

We beg to empress upon you our earnestness in this matter, and sincerely hope you will give same your most careful attention and consideration—

Yours very truly,

(Signed) J. J. BETHEA,

[SEAL.] *Int'd., Town of Latta, S. C.*

Mr. WILLCOX: We object to the introduction of that letter, as it is a mere correspondence between Mr. Bethea, the intendant, and the railroad commission.

Introduced subject to objection as Exhibit E.

Q. What papers are those you hold, as presented to your board?

A. This is a petition from citizens around Latta, asking the Railroad Commission to stop railroad trains 32 and 35 at Latta.

Q. How many papers have you there? There are other petitions besides the one you mention.

A. I think there are three others.

Q. What are those others?

A. Those are petitions from Dunbar, Bingham, and one other from Latta.

96 Q. Were they also presented to your Board?

A. I am not sure; I wouldn't testify to that—that any petition other than the one we hold here came to our office; but at the hearing these were—at the hearing these other three were presented.

Mr. WILLCOX: We object to the introduction of any petition except the petition on the part of the Latta people.

WITNESS: I am not prepared to say those petitions were not before us, but I know they were all here at the hearing.

Plaintiffs offer in evidence the following petition:

To the Honorable Board of Railroad Commissioners:

Having made effort with the Rail Road Authorities to stop Trains # 32 and # 35 without effect, we the undersigned Town Council and Business Men of Latta, S. C., hereby petition your Honorable Board to make Latta a Flag station for said trains for passengers only.

We will take pleasure in setting forth our reasons for this action at any time that you may suggest.

(Signed) J. J. Bethea, Intendant and Merchant; H. C. Finklea, warden and merchant; C. F. Bass, warden and merchant; F. M. McMillan, warden and merchant; W. Ellis Bethea, warden and merchant; F. M. McMillan, hardware merchant; H. A. Bethea, cashier Farmers and Merchants bank; N. E. George, wholesale groceries; R. J. Hays, merchant; A. M. Finklea, merchant; J. G. Crawford, merchant; H. A. Edwards, M. D., physician and druggist; McDonald & Ross, merchants; A. S. Manning, cashier Bank of Latta; John L. Dew, merchant and postmaster; S. A. McMillan, merchant; W. P. B. Campbell, merchant; E. L. Brown, physician and druggist; The George Co., merchants; Edwin A. Bethea, insurance agency; J. B. McCutchen, cotton buyer; E. B. Berry, president Latta Supply Co.; S. H. Smith, sec. and tre-s. Latta Supply Co.; W. G. Pace & Co., Leaf tobacco dealers; James H. Manning, president Bank of Latta; O. C. Fore, mgr. O. C. Fore Gin and Mfg. Co.; E. T. McCutchen, Livery and Sales stables; Miss Mamie Crawford, proprietor Central Hotel; F. Watkins, manager Latta Co-op. tob. Co.; M. H. Nims, merchant; J. H. Thacker, pastor M. E. Church, south Latta station; D. M. Dew, cotton buyer; J. S. Bethea, V. P. Bank of Latta; B. H. Meyers, proprietor Myer's hotel: D. Tiller, Methodist pastor; W. H. Simpson, Baptist pastor; F. A. Lathrop, druggist; J. C. Bethea; W. W. Willis, Baptist pastor; J. W. Smith, cotton buyer.

Introduced in evidence as Exhibit F.

Plaintiffs offer in evidence the following:

We the acting Intendants of Clio and Latta, S. C., do humbly petition your honorable board to consider at once the stopping of passenger trains # 32 and 35 at Latta, S. C., so as to give Latta, Clio and the stations on the Latta Branch Railroad adequate local accommodations.

(Signed) J. H. Bennett, Int'd. Clio, S. C.; J. J. Bethea, Int'd. Latta, S. C.

97 Objected to as not responsive to the pleadings; introduced subject to objection as Exhibit G.

Plaintiffs offer in evidence the following petition:

BINGHAM, S. C., *June* 7, 1904.

To the Hon. Board of Railroad Com.:

We the undersigned Citizens of Bingham, S. C. do hereby petition that the fast trains No-. 32 and 35 stop at Latta when flagged—As it is a junction of the Wilson Short Cut and the Latta Branch Railroads. (Signed) T. G. McSwain, M. D., C. D. Gaddy, Elliott Watson, W. W. -arham, A. W. McGregor, C. D. Morrison, T. C. Peshaw, H. E. English, J. W. Gaddy, C. L. Willis, P. M., James McRae, W. W. Wilks, J. A. Nicholson, E. A. M. Cormac, Jno. A. McLeod, H. A. McKay, J. F. Berry, A. J. Allen, A. L. McKay.

Objected to as not responsive to the pleadings; introduced subject to objection as Exhibit H.

Plaintiffs offer in evidence the following petition:

DUNBAR, S. C., 6/12/04.

To the Hon. Board of Railroad Com., Columbia, S. C.:

We the undersigned citizens of Dunbar a community do hereby petition your honorable board to make Latta S. C. a flag station for trains Nos. 32 and 35 for reasons already stated to you by the Latta delegation who met with you on June 18th, 1904—(Signed) R. H. Stanton, J. C. Dunbar, Jr., H. W. Boon, G. M. Cannon, J. A. Calhoun, W. C. Smith & Bro., J. E. Barrington, R. L. Welsh, Will H. Holtz, C. M. Kursteiner, J. P. Kursteiner, B. B. Stubb, John C. Dunbar, Burke Calhoun, John Calhoun, V. D. Wright, S. B. Norton, J. T. Lee, E. McQueen, J. M. Lee, D. McQueen, J. S. Smith.

Objected to as not responsive to the pleadings; introduced subject to objection as Exhibit I.

Plaintiffs offer in evidence the following letter:

MARCH 3, 1904.

Mr. W. N. Royall, Supt. A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Under this cover we hand you original petition drafted by citizens of Latta, S. C., and as we are informed supported by citizens along your line to Clio, requesting flag stops for Nos. 32 and 35.

We hope that this is a reasonable demand within your view, and that you can make these stops on flag without a formal hearing in this office. Kindly review, and copy if you so desire, this petition and return it at the earliest possible moment to this Board with your views.

By order of the Board.

—— ——, *Chairman.*

98 Q. Mr. Wharton, who signed that letter?

A. Mr. Garris. Mr. Garris was chairman of the Board at that time.

Letter introduced in evidence and marked Ex. K.

Q. Please state what letters these are?

A. They are from Mr. Royall's office; they are signed by Mr. Royall, the general superintendent.

Mr. WILLCOX: One, I think, is signed by Mr. E. Borden.

Q. They were the officers of the Atlantic Coast Line Railroad Company at the time of this investigation?

A. Yes, sir.

Mr. TOWNSEND: We offer those letters in evidence.

Mr. WILLCOX: The letters are objected to on the ground that it is not in evidence that those letters constituted any part of the

alleged hearing before the Railroad Commission, and it is simply in the nature of a correspondence between the Railroad Commission and the Railroad Company anterior to the hearing on the petition.

The letters are as follows:

WILMINGTON, N. C., *March 7th*, 1904.

Mr. C. W. Garris, Chairman, South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR:—I beg to acknowledge receipt of your letter of the 3rd inst., attaching original petition from the citizens of Latta, S. C., requesting that that point be made a flag station for Trains Nos. 32 and 35.

I herewith return you the original petition and beg to advise that it is with great difficulty that we can maintain the present schedule of these two trains, and with any additional stops it will be impossible for us to make the time. For your information, I attach a letter which has just been written to me by Mr. Borden, our General Superintendent of Transportation, in reference to this matter. You can very readily understand that if we increase the number of stops on these trains, we are placed at a great disadvantage with our fast schedules. If a stop is made at Latta, the people of Rowland, N. C., just north of Dillon, S. C., will, no doubt, ask for stops to be made with these same trains at their station. This would not only be the case at Rowland, but I think at several other points.

Referring to that portion of Mr. Borden's letter as to the assurance given us when the stops were agreed upon at Dillon for these trains: I beg to advise that I have taken this question up with Mr. Kenly, Fourth Vice-President & General Manager, and he confirms what Mr. Borden has to say in reference to the Com-
99 missioners stating they would take care of this matter if the people of Latta ever made request for Trains Nos. 32 and 35 to make stops at that station.

For your further information, I have attached copies of some correspondence between Mr. Bethea, Intendant of the Town of Latta, and our Company, in reference to a connection from the South, and on our last change of schedule which went into effect on January 10, 1904, we changed the time of the Latta Branch train so as to leave Pee Dee, S. C. after the arrival of Trains Nos. 50 and 32. This train is due to arrive at Latta at 9.13 P. M., only twenty-seven minutes behind Train No. 32, and, this was done in order to accommodate the people of Latta in accordance with the request made by Mr. Bethea. We cannot, therefore, think that the present petition which has been sent in, is reasonable, and I regret that we cannot make the stops at Latta with Trains 32 and 35 as is asked for in the petition.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Introduced in evidence subject to objection and marked Exhibit L.

WILMINGTON, N. C., *Mar.* 5, 1904.

Mr. W. N. Royall, Gen. Supt., City.

DEAR SIR: I return herewith papers received with your letter of March 4th in regard to petition of parties at Latta for trains Nos. 32 and 35 to stop at that point.

Our records will show that trains 32 and 35 are pulling their full complement of cars—9 and 10 daily. The schedule of No. 32 is very fast, averaging about 40 miles per hour, and that of No. 35 about 38 miles per hour. No. 32 at present makes six station stops and No. 35 seven station stops, in addition to two or three stops for water, which depend upon the size of the train. The records will also show that with a few exceptions we are unable to maintain the schedules that are now being operated, and it is simply out of the question for us to entertain a proposition to stop these trains at Latta. Such a concession would sooner or later result in similar requests being made for the trains to stop at other stations of equal importance as Latta, and thereby entirely defeat the purpose for which these trains are run. If I remember correctly, when the question of stopping these trains at Dillon was brought up on several occasions, we were assured by the Commission that if we acceded to the wishes of the parties at Dillon and stopped the trains at this point, the Commission would not bring any pressure to bear in case Latta or other points insisted upon the trains making additional stops. I feel quite sure that the General Manager will corroborate this statement. You will recall that we only recently changed the schedule of the Latta Branch train to connect with No. 50 at Pee Dee so that the people on the Latta and Clio branch would have connection with No. 50, which gives them substantially the same service as if No. 32 stopped at that point. At the Time Convention held at Washington some time since, we asked for more time for trains 32 and 35, but connections were unable to let us lengthen out the schedule.

I think if you will give the Commission these facts, they
100 will appreciate our position, and not insist upon the trains stopping at Latta. We simply cannot make this stop with trains 32 and 35.

Yours truly,
(Signed) E. BORDEN.

Introduced in evidence, subject to objection, as Exhibit M.

Q. Now, Mr. Wharton, these letters to W. N. Royall dated May 12th and 13th, the copies are just —— —— Chairman. Who were the originals signed by?

A. Mr. Garris, Chairman. We always make copies.

The plaintiffs offer in evidence the following letter:

MAY 12, 1904.

Mr. W. N. Royall, General Supt. A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Referring further to our phone message of this date regarding the petition of citizens of Latta, S. C., for the stopping of certain trains on your line at that point.

We beg to advise you that these people still insist that they are entitled to this consideration, and further ask a hearing upon this subject to be appointed for May 18th. We must request you to be here on the night of the 17th, because the meeting must take place as early as nine o'clock on the following morning.

You may bring your file on the subject of their petition, but please do not disappoint us. This appointment, of course, is made upon authority of your conversation this morning.

By order of the Board.

—— ——, *Chairman.*

Objected to on same ground as to previous letters; introduced subject to objection as Exhibit N.

The plaintiffs offer in evidence the following letter:

MAY 13, 1904.

Mr. W. N. Royall, General Supt. A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Referring to your favor of the 12th instant in the matter of Sunday train for Bishopville, S. C.

We beg to advise that we have written to the parties at Bishopville calling their attention to the two petitions, and saying that the Board dislikes very much to undertake to settle this question between the citizens, and asking if they cannot get together and settle it among themselves. To this communication we have not yet had reply. As soon as we hear from them we will immediately advise you.

—— ——, *Chairman.*

By order of the Board.

—— ——, *Secretary.*

Objected to on same ground as to previous letters, introduced subject to objection as Exhibit O.

101 The plaintiffs offer in evidence letter from D. M. McColl to C. W. Garris, dated May 26, 1904, petition of people of Clio, and letter from —, Chairman, to D. M. McColl, dated May 30, 1904. Objected to because it is a communication between a third party and the railroad commission; there is no evidence that the petition was ever filed with the railroad commission, and no evidence that it was ever brought to the attention of the railroad company anterior to the alleged hearing.

The letter referred to is as follows:

CLIO, S. C., 5/26*th*, 1904.

Mr. C. W. Garris, Clio, S. C.

MY DEAR SIR: Enclosed please find petition which should of been forwarded to you some time ago but owing to the fact that it was miss placed is the cause. However I hope it will reach you in due time for consideration we are very much in need of this arrangement from this point & certainly hope your honorable board will see fit to put it in effect at once. Trusting this will meet with your favor & receive your earliest attention,

Yours very truly, D. M. McCOLL.

Introduced in evidence subject to objection as Exhibit P.

The petition above referred to is as follows:

To our Honorable Board of Railroad Commissioners:—

We, the undersigned Town Council, Business men and Citizens of Clio, living at terminal of Latta Branch Railroad, believing that travel from this point merits consideration from the A. C. L. Railroad, and having no other way of reaching the Fast Mail North and South Bound Trains except over the Latta Branch, respectfully petition your Honorable Board to make Latta a Flag Station for A. C. L. Fast Mail Trains Nos. 32 and 35.

(Signed) Levi Ivey, Mayor; Henry J. Bennett, Town Clerk; J. H. Stanton, alderman; J. E. McLeod, alderman; W. F. Crass, Cashier Bank of Clio; A. L. Calhoun, Jr., merchant; E. Sternberger Co., merchants; Geo. R. Welch, merchant; W. H. Holt, merchant; W. C. Smith & Bro., merchants; H. C. McColl, merchant; W. R. Sahmon, merchant; D. P. Lann, merchant; T. D. McLaurin, merchant; J. H. Bennett, prest. and treas. J. H. Bennett Co.; Chas. Manning, sec. J. H. Bennetts Co.; J. C. Covington, K. P. distributor and general merchandise; E. W. Smith.

Introduced in evidence subject to objection as Exhibit Q.

The following is the second letter above referred to:

MAY 30, 1904.

Mr. D. M. McColl, Clio, S. C.

DEAR SIR: We beg to acknowledge receipt of your favor
102 of the 26th instant containing petition of the citizens of Clio asking that Latta be made a flag station for A. C. L. trains Nos. 32 & 35.

We have had this matter up with Supt. Royall and he has taken it up with a committee of citizens from Latta. We hope that the matter wil be satisfactorily arranged for both citizens of Clio and Latta.

Will advise you later.

—— ——, *Chairman.*

By order of the Board.

—— —— *Secretary.*

Introduced in evidence subject to objection as Exhibit R.

The plaintiffs offer in evidence the following letter:

WILMINGTON, N. C., *May 31st*, 1904.

Mr. C. W. Garris, Chairman South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg herewith to hand you for your information, copy of my letter of the 30th inst., addressed to Mr. J. J. Bethea, Intendant of the Town of Latta, S. C., relative to the petition the people at that point sent in requesting Trains Nos. 32 and 35 be stopped on signal at Latta. I regret very much that we find after going over this matter thoroughly we could not make the stops at Latta with these trains, and thought it well to let you see what I have said to Mr. Bethea.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Objected to on the same ground as to former letters; introduced in evidence subject to objection as Exhibit S.

The plaintiffs offer in evidence the following letter:

MAY 30TH, 1904.

Mr. J. J. Bethea, Intendant, Latta, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of the 26th inst., and in reply thereto will say that the time fixed upon for me to write you, I understood from the last remark of the Chairman of the Railroad Commissioners of South Carolina, was thirty days; however, it was my intention to write you as soon as I could do so after taking the question up and going over it thoroughly with our other officials.

We have gone over this matter very carefully, and I regret to say that we cannot make Latta a flag stop for our Trains Nos. 32 and 35. As already explained to the Commissioners and your Committee when in Columbia, S. C. on the 18th inst., it is a very difficult thing for us to maintain our present schedule, and to put on additional stops for these trains would make it impossible for us to make the time. I further explained to you that the Post Office Department is now requiring us to make a monthly report to them of all delays met with by these trains. It is, therefore, out of the question for us to have any more stops on these trains than those we have at present.

For your information, I will state that we have just declined to allow either of these trains to make a stop which has
103 been requested of us at another junction point on our line.

I think I fully explained this matter before the Commissioners on the 18th inst. If the people of Latta, or of Clio, have any suggestion to make in reference to any change in the schedule of the passenger train now running between Clio and Pee Dee, we will very gladly consider it, and if it is possible to do so, comply with their wishes.

I am sure that you gentlemen know perfectly well that it would

give us pleasure to grant your request in reference to stopping trains Nos. 32 and 35 at Latta if we felt we could possibly do it without seriously interfering with this through fast mail service.

Yours truly,

—— ——,
General Sup't.

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit T.

The plaintiffs offer in evidence the following letter:

JULY 1 1904.

Mr. W. N. Royall, Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Enclosed we beg to hand you copy of letter received from the Intendant of the town of Latta written him by the Attorney General of this State. This is sent for your information.

It is very clear that the Attorney General has given the citizens of Latta the information that this Board can require the trains referred to to stop at Latta if the local conditions have not been adequately met. This information was furnished these citizens without our knowledge and they forwarded the same to this Board demanding that we have said trains stopped as they have not the required accommodations they are entitled to under the law.

Kindly let us have your opinion of this situation as soon as possible.

—— ——, *Chairman.*

By order of the Board.
—— ——, *Secretary.*

Objected to on same ground as to previous letters; introduced subject to objection as Exhibit U.

The plaintiffs offer in evidence the following letter:

WILMINGTON, N. C., *July* 6, 1904.

Mr. C. W. Garris, Chairman South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of the 1st instant,, enclosing copy of letter dated June 18th from Attorney General U. X. Gunter to Mr. J. J. Bethea, relative to the question of stopping our Trains Nos. 32 and 35 at Latta.

I am now endeavoring to get up such information that I think is necessary to show to the Commissioners that we have ade-
104 quate passenger accommodations to and from Latta, and that to expect us to stop Trains 32 and 35 at that point is unreasonable. I will forward you this information as soon as possible.

Yours truly,
(Signed) W. N. ROYALL,
General Superintendent.

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit V.

The plaintiffs offer in evidence the following letter:

JULY 8, 1904.

Mr. W. N. Royall, General Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Your favor of the 6th instant duly to hand. We note that you say you expect to get up information that will show to the Commission that the passenger service given to people at Latta and Clio furnishes ample accommodation for the citizens. We must beg that you get this information as soon as possible as these people are very persistent in their demands that something more should be done than has been done at this time.

—— ——, *Chairman.*

By order of the Board.

—— ——, *Secretary.*

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit W.

Plaintiffs offer in evidence the following letter:

JULY 18, 1904.

Mr. W. N. Royall, General Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: After receiving your last favor referring to the opinion of the Attorney General, and also after personal conference with him, we have decided before taking final action in the matter of the train service rendered the people of Latta to make a personal visit to Latta. Commissioners Wharton and Caughman will leave here on Sunday afternoon, the 24th instant, and go through to Dillon and drive back to Latta by private conveyance so as to be there early Monday morning. We will be glad to have you meet us on that date.

—— ——, *Chairman.*

By order of the Board.

—— ——, *Secretary.*

Objected to on same ground as to previous letters; introduced in evidence subject to objection and marked Exhibit X.

Plaintiffs offer in evidence the following letter:

WILMINGTON, N. C., *July* 19, 1904.

Mr. C. W. Garris, Chairman South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of the 18th instant in reference to Commissioners Wharton and
105 Caughman visiting Latta, S. C. on next Monday, the 25th instant, and note that you would like for me to meet them there on that date in reference to the petition of the people of Latta to have Trains Nos. 32 and 35 stop at that point on signal.

I will try to be on hand at the time named in your letter.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Objected to on same ground as to previous letters; introduced subject to objection as Exhibit Y.

The plaintiffs offer in evidence the following telegram:

Dated Wilmington, N. C., 7/22, 1904.

To C. W. Garris:

Your letter of the 20th rec'd will go to Latta fro-, Florence on our train No. 40 Monday the 25th inst. This train is due at Latta at 10.30 A. M.

(Signed) W. N. ROYALL.

Objected to on same ground as to previous letters; introduced subject to objection as Exhibit Z.

Plaintiffs offer in evidence the following letter:

JULY 29, 1904.

BOARD OF RAILROAD COMMISSIONERS OF SOUTH CAROLINA
v.
ATLANTIC COAST LINE RAILROAD COMPANY.

Mr. W. N. Royall, General Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: We beg to hand you herewith the finding and order of this Board in the matter as set forth as follows:

On petition of the town authorities of the town of Latta and of Clio and citizens along the Latta Branch Railroad for the stopping of trains Nos. 32 and 35 on flag for receiving and delivering passengers at said station. After personal inspection of the situation at Latta, and the demand of said citizens for these accommodations, it appears to this Board that sufficient accommodation was not furnished to these citizens to fulfill the requirements of the statutes of this State. The evidence was sufficient to warrant this Board in demanding that better accommodation should be furnished, and that it was not unreasonable to ask the said company to stop trains Nos. 32 and 35 on flag.

Therefore, it is hereby ordered that said trains shall stop on flag at said Latta station on and after August 1st.

—— ——, *Chairman.*

—— ——, *Secretary.*

P. S.—Not having heard from you agreeing to the understanding and agreement as understood by Commissioners Wharton and Caugh-

106 man we forward you the above order. Not hearing from you we presume that it has become the decision matter. If such is a fact kindly notify us officially as soon as possible.

—— ——, *Chairman.*

By order of the Board.

—— ——, *Secretary.*

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit AA.

Plaintiffs offer in evidence the following letter:

WILMINGTON, N. C., *August* 30, 1904.

Mr. C. W. Garris, Chairman South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of July 29th in reference to stopping Trains Nos. 32 *4ns* 35 on flag at Latta, S. C.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit BB.

Plaintiffs offer in evidence the following letters:

WILMINGTON, N. C., *August 30th,* 1904.

Mr. D. P. Duncan, Secretary South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of the 24th instant, enclosing copy of letter of July 29th, which came to me by express, in reference to Trains Nos. 32 and 35 stopping on flag at Latta, S. C.

I regret that I have heretofore failed to acknowledge receipt of this letter of July 29th. My information is, that the company has sixty days in which to decide the matter. Will you kindly advise me if I am properly informed as to this?

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

SEPT. 1, 1904.

Mr. W. N. Royall, General Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Replying to your favor of the 30th ultimo, I beg to say that your information is correct, and that your Company under the Statutes of this State has 60 days in which to decide whether you will accept the order of this Board or not. The object that I had in my last favor addressed to you was simply to know if

you had received this communication. This was the only matter that I was responsible for.

Yours truly,

—— ——, *Secretary.*

Objected to on same ground as to previous letters; introdficed in evidence subject to objection as Exhibit CC.

107 Q. Did you come to Latta to the hearing of this petition?
A. Yes, sir.
Q. Who appeared on behalf of the railroad company?
A. Mr. Willcox and Mr. Royall. There might have been others, but those are the two.
Q. Did it make a showing before your board?
A. Yes, sir.
Q. Did your board consider the matter?
A. Yes, sir.
Q. And decided on July 29th?
A. Yes, sir, it was right along those dates.
Q. That was the date your decision was filed?
A. Yes, sir.
Q. Mr. Wharton, do you know the Columbia, Laurens and Newberry road—Columbia, Newberry and Laurens, I believe is the name?
A. Yes, sir.
Q. Is that operated in connection with the Atlantic Coast Line?
A. They have a traffic arrangement. Now, what per cent. of the fares is given to either I don't know, but they have a traffic arrangement whereby the trains of the Atlantic Coast Line run over it.
Q. The trains of the Atlantic Coast Line are operated over that road to Spartanburg?
A. To Greenville.

Mr. WILLCOX: We object to that as irrelevant.

Q. Does that traffic arrangement apply to passenger trains?
A. To passenger trains.
Q. And in that way the passengers from the Coast Line can reach Greenville in the morning?
A. Yes, sir.

Mr. WILLCOX: We object to the testimony as to any arrangement that the Coast Line has with the Columbia, Newberry and Laurens Railroad as irrelevant.

108 Cross-examination.

By Mr. WILLCOX:

Q. The Columbia, Newberry & Laurens road is a separate corporation, isn't it?
A. Yes, sir. At least it has a different president to the Atlantic Coast Line.
Q. And makes its separate returns in every respect for taxation?
A. Yes, sir.

Q. It has separate reports?

A. Yes, sir.

Q. And so far as you know the Coast Line has nothing to do with running trains over that road?

A. Yes, sir, I know this: that the same conductor and train crew that leaves Charleston with the Atlantic Coast Line goes right over the C. N. & L. and on to Greenville.

Q. So far as you know the C. N. & L. has control of the running of those trains, pays the expenses of the running of those trains and receives the profits of the running of those trains, if any?

A. You mean the C. N. & L.?

Q. Yes?

A. Well, sir, we have never investigated in that matter, but the common understanding of the Commission has always been that being the same train the rental was paid. Now, I don't know that. But I know the Atlantic Coast Line people furnish all the conductors, engineers, train crew in every way. Now, what settlement they make has never been brought to the attention of the Commission.

Q. When the Commission takes up any question with the C. N. & L. railroad do they deal with the C. N. & L. railroad officials or with the Coast Line?

A. We take it up with Mr. Childs, the president of the C. N. & L.

Q. You would not know to the contrary if I were to state to you that the C. N. & L. entirely manages the running of the trains, pays the conductors, receives the profits and pays the expenses of the running of trains over the C. N. & L. railroad—You wouldn't know whether it was a correct or an incorrect statement?

109 A. No, sir, of my personal knowledge I would not. It is only based upon a common sense proposition—no work for nothing.

Q. In other words, if the same conductors were to go over the R. F. & P. Railroad, or the Pennsylvania Railroad——

A. The Pennsylvania is out of our jurisdiction and we haven't looked into that.

Q. But you couldn't say that if it was?

A. No, sir.

Q. As a matter of fact, the trains going by Latta here will have the same conductors and porters from Jacksonville to New York: that wouldn't make them run over the same road, would it?

A. There is a difference between a common passenger train and a Pullman. These long lines, that Pullman is furnished and, if I understand it, the railroad people pay the Pullman people for allowing them to run it.

Q. What would you say about the fact that the Southern runs passenger trains over the Coast Line from Savannah to Jacksonville? That would not make the Southern the owner of the Coast Line or the Coast Line the owner of the Southern?

A. It would not, sir, and I am only testifying something that comes under my observation every week.

Q. These arrangements are often made under your supervision in order to facilitate travel?

A. Yes, sir.

Q. And it is not inconsistent with each road controlling that train after it gets on its line?

A. No, sir.

Q. Mr. Wharton, the petition that was filed by the people of Latta is the only petition upon which the railroad was summoned to the hearing at Latta?

A. Well, I would not testify positively on that point. These other petitions, and I am inclined to think from the date of one—

110 that one had been delayed—and it did come in; but I wouldn't positively say so. But five petitions were present at the hearing, and the petitioners were present and testified.

Q. But so far as your recollection goes the three petitions other than the Latta petition were never presented to the Board anterior to the Latta hearing?

A. No, sir, I couldn't testify that was a fact, but I do know they were before us the day we had the hearing.

Q. Was the railroad, according to your recollection, notified prior to the hearing here at Latta of the existence of these petitions?

A. Well, sir, I wouldn't say that. The letters on file I think will show. We took the matter up with Mr. Royall and he declined to make the stops and we requested him to meet us on petition.

Q. That is the Latta petition?

A. Yes, sir.

Q. But you can't say that the three other petitions other than the Latta petition were presented to him prior to the hearing, or that he was notified those petitions were to be used?

A. I can't say, but I will say that if those petitions reached the office in the early part of July I am satisfied they were forwarded to him; but I couldn't say that from memory.

Q. If they had been forwarded the Railroad Commission would have some letter or a copy of a letter forwarding them?

A. It is likely, sir.

Q. In other words, in the matter of that importance, as to whether they were forwarded or not, of course as a Commissioner you would not trust to your recollection, but would go to the files and produce copies?

A. Go to the files. We retain a copy of every letter. I

111 didn't know I would be put on the stand as a witness. Consequently I made no effort to refresh my memory or to take from the files any paper.

At this point, the reference adjourned to meet again at Clio at ten o'clock a. m. tomorow, July 28th, 1905.

CLIO, S. C., *July 28th*, 1905.

Pursuant to adjournment, reference was called at 10 o'clock today. The same parties and attorneys were present, except the members of the Railroad Commission. The following testimony was heard:

J. C. COVINGTON, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Townsend, and testified as follows:

Q. Mr. Covington, where do you reside, do business?
A. In Clio, South Carolina.
Q. On what railroad is Clio?
A. Latta Branch.
Q. Is that the only railroad reaching it?
A. Yes, sir.
Q. What is the size of the place?
A. About 700, I think, to 800.
Q. Are there any other places of business between here and Latta?
A. Yes, sir, business is done at Dunbar, Bingham and Mallory.
Q. Stations on this same road between here and there?
A. Yes, sir.
Q. About what is the amount of business done here?
A. I think about half a million dollars.
Q. What facilities are afforded by the railroad for travel to and from?
A. We have no outlet except through Latta.
Q. Nothing except through Latta?
A. Except through Latta.

112 Mr. WILLCOX: I have concluded, with your permission, that I will not interrupt any witness by any objections. I will wait always until he gets through, with your permission.
Mr. TOWNSEND: All right.

Q. In going from Clio to points beyond Latta, what are the connections afforded, what trains can you take to get off?
A. Well, do you want me to state the schedule?
Q. Well?
A. We leave here in the morning at 7 o'clock and make connections going south at Latta; but going north in the afternoon to catch that fast train you have either to drive through from here to Dillon or go to Florence, at an additional expense of railroad fare from Latta to Florence—both ways.
Q. About what are the number of persons from here, say, that are delayed there in order to catch this train going north in the afternoon, fast train?
A. I don't know that. I have counted up a few minutes ago. I know of a dozen people that have gone from this place to points north within the last ten days.
Q. And they have been unable to make this connection in the afternoon?
A. Unable to make that connection in the afternoon.
Q. How large is the passenger travel generally for points beyond Latta?
A. I couldn't answer that question; I don't know.
Q. Are through tickets sold here for points?
A. I am not positive of that. I think not.

Q. Are mileage books sold here? Can you buy them at this agency?

A. I think so. You can get them at this agency by applying for them. They will have them sent here for you.

Q. How far is the Seaboard from here—the Seaboard Railroad station?

A. I think the nearest point is about fifteen miles.

113 Q. Is that ever used by people?

A. Quite often.

Q. Why?

A. Well, they can make better connections. They can't get any connections at all to the north in the afternoon from here.

Q. On the Coast Line, so they drive across to the Seaboard?

A. Yes, sir.

Q. To what point is that they drive across?

A. To Laurinburg, to Maxton, and they occasionally go to Bennettsville and go from there to Cheraw.

Mr. WILLCOX: We interpose the usual objection to any testimony concerning conveniences at Clio, as to the sale of tickets, and as to the Seaboard connection, on the same ground.

Cross-examination.

(By Mr. WILLCOX:)

Q. You have a double daily connection or service from Clio to Latta?

A. Yes, sir.

Q. Leaving here on the morning train to Latta you have stated that you make an excellent connection south?

A. Yes, sir, good connection south.

Q. Is it not also a fact that when you go on the morning train to Latta you also make an excellent connection north?

A. To the north in the morning? Yes, sir, on the local train.

Q. When you use the service between Clio and Latta in the afternoon you also make a good southern connection?

A. Southern connection, yes, sir.

Q. Your only objection, then, is that in going to Latta south in the afternoon from Clio that you can't make the connection with train 32 going north without driving from Latta to Dillon?

A. Yes, sir, or going to Florence.

Q. Train No. 40 which goes by Latta north in the morning

114 and which makes connection with the train from Clio to Latta is a nice train?

A. Yes, sir, that is a very nice train.

Q. Carries a Pullman?

A. I don't know about that.

Q. Makes all the northern connections?

A. Yes, sir.

Q. And you have used that train?

A. Yes, sir, I have used that.

Q. Now in the afternoon when you go from Clio to Latta you can

drive from Latta to Dillon, a distance of six miles, and catch train No. 32 going north?

A. By driving from Latta to Dillon, yes, sir.

Q. That is only six miles?

A. I think six miles.

Q. And do you mean to say that a great many people find it more convenient to drive from Clio to the Seaboard, 15 miles, rather than make the connection at Dillon in the way I have stated?

A. I think they do sir. I know of a party of six that left here some time ago and got to Latta and couldn't get any team to drive to Dillon with at all.

Q. You don't mean to say, however, that any inconvenience connected with going to Latta from Clio in the afternoon and driving from Latta to Dillon actually caused them to go to the Seaboard?

A. I believe they would go over the Atlantic Coast Line if they had that connection there.

Q. Isn't it rather a matter of preference than of being subjected to any inconvenience?

A. I think some times it is and some times it is not.

Q. Which, in your judgment, is the more convenient, to go down to Latta and drive to Dillon and catch 32 connection going north, or driving to the Seaboard connection?

A. Well, the drive, of course, would be shorter from Latta to Dillon. I don't know why—I am not prepared to say why they prefer going to the Seaboard.

115 Redirect examination.

(By. TOWNSEND:)

Q. Mr. Covington, what is the character of the accommodations given on the trains between here and Latta? I mean the character of the train, the cars?

A. I think they are very sorry.

Q. Will you describe the character of the cars? The Court can't see it, you know.

A. Well, I don't know hardly how to describe it, only it seems to me we have a very sorry car; very sorry to ride in.

Q. What are the objections to it?

A. Well, I don't know. I don't think it is very comfortable. I don't think it is hardly decent, I don't think. We have only one car and it is not a very good one. That is the only objection I can give to it. Of course it will hold them all right—pull them.

(By Mr. WOODS:)

Q. How far is it from here to Latta?

A. I think it is 19 or 20 miles; 20, I believe, we call it.

Q. What time does the train leave Clio for Latta in the afternoon?

A. Four thirty.

Q. What time does it get to Latta?

A. I think about 5.30.

Q. Is the train leaving for Latta in the afternoon a freight or a passenger train, or a mixed train?

A. How is that?

Q. Is the train leaving here about 4.30 for Latta a passenger or a mixed train?

A. Well, it is mixed; both ride in the same coach.

Q. I mean does it carry freight and passengers?

A. Yes, it carries freight and passengers.

Q. So it is a freight train, with passenger accommodations?

A. Yes, sir.

Q. Then it takes about an hour to run this 19 or 20 miles to Latta?

A. Yes, sir.

Q. And after you get to Latta to go to Dillion is it or
116 is it not nesessary to hire a horse and buggy?

A. Yes, sir, it is necessary to hire one to get there.

Q. If a person goes from Clio to the Seaboard connection, can they use their own horse and buggy?

A. Very often they can.

Q. Then, in reply to Mr. Willcox's question, what would you say was the reason people go to the Seaboard?

A. Well, some go there, they go there—some do—because they have their own turnouts. And, as I said a while ago, it is sometimes the case you can't get turnouts at Latta—couldn't a few days ago.

Q. You say a party of six went down there a few days ago and couldn't get it?

A. Yes, sir.

Q. What did the Coast Line do?

A. They stopped the fast train for them. It is preferable, of course, not to have to hire a team to go to either one of the places.

Q. It is an inconvenience?

A. Yes, sir.

Recross-examination.

(By Mr. Willcox:)

Q. How far is it from here to Dillon?

A. Twenty miles.

Q. Do you assign as the reason why people drive to the Seaboard connection, fifteen miles, that they have their own teams?

A. Not altogether that reason.

Q. Well, how much of it is due to that reason?

A. I am not prepared to say.

Q. As a matter of fact, if they would drive their teams to the Seaboard connection you think it would be less expense than to go to Latta and drive to Dillon?

A. Yes, sir, it would be less expense.

Q. Why?

A. Well, you have got a team that would cost you very near as much to drive from Latta to Dillon as it would be to drive to these other points.

117 Q. It is just as expensive, then, to get a team for six miles as for 15?

A. Well, not altogether, but it don't make so much difference for that difference, I don't think.

Q. You have no special objection to this car, have you?

A. I can ride in it all right, I suppose.

Q. You haven't undertaken to name any special objection?

A. No, sir, I wouldn't indict the railroad on account of it.

Q. You have no special complaint to make against the railroad on account of the car used between here and Latta?

A. Well, I wouldn't like to make any special complaint about it. People as a general thing do complain about it when they ride on it.

Q. I am asking what you do. Have you any special objection to it, complaint to make?

A. No, sir, I make none myself, no special complaint as to the character of the car.

H. J. BENNETT, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Where is your residence and place of business?

A. Clio, South Carolina.

Q. On what railroad is Clio?

A. On the Latta Branch.

Q. Is the outlet to Latta the only railroad outlet from Clio?

A. Yes, sir.

Q. From your own personal experience and from what you have observed and know of your own knoweldge as to others, is there a good volume of travel here that is demanding double-daily service at Latta?

A. Well, sir, it seems to me it is. I know there is a pretty good volume of travel. While I don't travel up and down the road very much, I know of people passing through and making this connection.

118 Q. And you think there is a good volume of travel demanding this double-daily service? Weren't you in that party of six some time ago?

A. Yes, sir.

Q. And they stopped the train?

A. Yes, sir.

Q. What do you say about this passenger coach? I ask you to answer these questions: Whether that car is comfortable?—Well, you just describe that car yourself, as to the seats and the cleanliness, the facilities for drinking water, water closets, and so on?

A. Well, I would consider the car very uncleanly. It is a very light car, and very rough—extremely rough; and it has very poor lights, has no closet, that is, the best end of it, where the ladies ride, there is no closet.

Q. There is only one closet?

A. Only one closet, and that is in the smoker.

Q. What about the facilities for drinking water?

A. Well, so indecent that people who ride on it hardly ever drink.

Q. Do they or not give you a glass to drink out of?
A. They do not. They give a very rusty tin cup.
Q. So that is your objection to that car?
A. I think that is all I have.
Q. Have you looked into the sale of tickets, whether you can buy coupon tickets or mileage books, whether they keep them on sale as a regular thing, and whether the passenger receipts that naturally belong to the Clio office go to other offices?
A. Well, sir, we generally have to notify the agent when we want a mileage book or coupon ticket three or four days ahead.
Q. Then, I understand it, they are not kept on sale regularly?
A. Not kept on sale here, no.
Q. Is it or not a fact that parties frequently have to buy their tickets at other points?
A. Yes, sir, unless they notify the agent several days
119 ahead.

Mr. WILLCOX: We object to the questions asked the witness as leading. We object to the questions and answers as irrelevant, because concerning a car used between Latta and Clio, which has nothing to do with the present controversy; and questions concerning the sale of tickets at Clio, which have nothing to do with the present controversy, and therefore irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. Mr. Bennett, what has an uncomfortable car used between Clio and Latta, South Carolina, got to do with stopping trains 32 and 35 at Latta? Can you see any connection between the two, any relation between the two?
A. I cannot.
Q. Do you know what question we are trying?
A. We pay as much fare to ride on this rough train as people do to ride on the good train, and we should have good accommodation, I think.
Q. The question I asked you was, What relation did that car have with stopping trains 32 and 35? Do you see any connection between the two propositions?
A. Oh, there is no connection there; of course one has nothing to do with the other, I don't think.
Q. In other words, a bad car between here and Latta has nothing to do with stopping trains 32 and 35?
A. No, sir.
Q. Can you give me your reasons why you answered Mr. Woods as follows: That there was a demand for a double-daily service by Latta? In other words, I understood you to state to Mr. Woods that there were conditions prevailing that required a double-daily service at Latta? Will you explain why, the reason for that statement?
A. Well, we can get no connection going north without going to Florence.

120 Q. Is that your sole reason?

A. Or by driving across to Dillon. Yes, sir, that is my sole reason, I suppose.

Q. Can't you make connection with the morning train north by leaving here in the morning?

A. Yes, sir.

Q. Isn't that a sufficient connection?

A. No, sir, I don't think so.

Q. Why not?

A. When people are going north they generally want a through train. That is a very tiresome train to ride all day.

Q. Why?

A. Well, it stops at every station.

Q. Why do you want to ride on the next train?

A. Well, it gives a through service and fast service for a long-distance ride.

Q. What is the principal reason—because it is fast?

A. Well, no. Well, it is fast, too. That is, it stops at very few places; puts you north so much quicker than the other.

Q. Don't you realize the fact, then, that if you take that fast train and stop it at Latta and every point you would make it like that other train?

A. If you stop it at every point the other stops you would.

Q. In other words, if you stopped it at Latta and similar points you would make it like the other train?

A. I don't know anything about the geography of the railroad.

Q. Well, you don't have to know anything about geography to know if you stop a train at every point you will make it slow..

A. I don't know how many points there are on your line as important as Latta is.

Q. You will admit that if you stop it as often as the other it will be as slow a train?

A. It will be more of a local train than it is now.

Q. Then you will admit that if you stop it at as many
121 places as you stop 39 and 40 it will be as slow a train as 39 or 40?

A. Well, the more stops there is, of course the slower the train is.

Q. Well, you don't care to admit that then—that it would be as slow a train if you stopped it at as many points as 39 or 40?

A. Oh, if you stopped it at as many points, certainly; it would be a slower train.

Q. And if you did stop it you wouldn't have the fast train to ride on?

A. If you stopped it at as many points as you did the other, what we call the "local" train, it wouldn't be no faster.

Q. You can leave Clio in the morning and make connections at Latta for all points south, can you not?

A. Well, not at Latta, no. We generally go to Pee Dee——

Q. Well, you go through Latta, don't you? That is what I mean.

A. Yes—yes; certainly.

Q. You can, then, make connection at Latta with all points south in the morning.

A. Yes, sir.

Q. Charleston, Wilmington, Marion and so forth? You also have the other train you make connection with at Latta for all points north?

A. The local train, yes, sir; and you have to stay there at Latta about three hours.

Q. Well, the train does come by there in the ordinary course of business and takes you on if you want to go north?

A. Yes.

Q. Now, in the afternoon you can go down from Clio to Latta and then can make connection with all points south?

A. Yes, sir.

Q. And you can go on to Florence and take the fast train north?

A. At an extra expense, yes; by going from Latta to Florence you can take the fast train.

Q. Or you can go to Dillon and take the train there?

A. If you can get a way to go. We could have gotten a
122 wagon the other night, I suppose, 'way up.

Q. You could have gotten a carriage, eh?

A. Couldn't get a carriage.

Q. Or you could have gotten a buggy?

A. Couldn't get a buggy.

Q. On the question of the car between here and Latta, when you said the car was unclean did you mean to say that it was uncleanly from inattention or uncleanly from the ordinary use occasioned by cinders and the like, getting in the car by ordinary use?

A. Well, the windows are always very unclean; the seats are some of them very unclean; it is just what I would call an unclean car.

Q. How often do you ride on it, Mr. Bennett?

A. Well, I ride on it—not very much; half a dozen times a year, maybe.

Q. What is the seating capacity of the car?

A. Couldn't tell you.

Q. Have good water?

A. Well, I have drunk water a few times when they had ice water; I have drunk water a few times when it was about as stale, seemingly, as it could be.

Q. Don't they get it from Clio?

A. I couldn't tell you.

Redirect examination.

(By Mr. Woods:)

Q. Have you ever gone north on Train 40?

A. That is the local train?

Q. Yes, sir?

A. Yes, sir, I have gone north on it.

Q. Does that train stop very often?

A. Well, every station on the road, as well as I remember. It has been about a year ago.

Q. Mr. Bennett, are there a very great number of stations between Latta and Richmond, a great number of stops that that train makes?

A. Yes, sir, a great number of stops.

123 Q. I will ask you to look at that map of the Atlantic Coast Line and tell me how many junctions there are between Latta and Richmond?

A. Seven.

Q. Seven between Latta and Richmond? Is Latta a junction?

A. Yes, sir.

Q. Are you confident that train 40 stops a great many more times between Richmond and Latta than seven times?

A. Now, really, I——

Q. Well, you can count the stations, if you wish?

A. When I go on that through train I generally go at night, and of course I know nothing about it.

Q. Yes, but about train 40, on the local train? Count the stations from Latta to Richmond.

A. About 26 stops.

Q. And seven junctions?

A. Yes, sir.

Q. So, Mr. Bennett, if trains were stopped at junctional points like Latta it would not reduce it to a slow train like No. 40?

A. No, sir.

Q. It would still be a fast train, in your opinion?

A. Yes, sir.

Recross examination.

By Mr. WILLCOX:

Q. Your objection to trains 40 and 39—that is, the local trains you describe, one going south and one going north—your objection to that train is that it stops too often?

A. My objection is that it is a slow train; that's all. Of course stopping so often makes it slow.

Q. Isn't that your principal objection to it?

A. Why, yes, sir; that is about my only objection. It is a very nice train.

Q. Now, your principal objection to 32 and 35—the fast trains—is that they don't stop enough, a sufficient number of times?

A. How was that question?

Q. I say your objection to 32 and 35, which are the fast

124 trains, is that they don't stop a sufficient number of times?

A. Yes.

Redirect examination.

(By Mr. WOODS:)

Q. But your objection——

Objected to as leading.

Q. Do you wish 32 and 35 to stop at more than one point?

Objected to as entirely leading and not in reply.

A. If it stops at Latta I don't care whether it stops any more or not; it needn't stop until it gets to Richmond—anywheres.

Dr. C. S. EVANS, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Townsend, and testified as follows:

Q. You are a practicing physician?
A. Yes, sir.
Q. Practicing at Clio?
A. Yes, sir.
Q. Do you know what facilities are afforded for passengers leaving Clio and going to points beyond Latta?
A. I can't say that I can. I haven't given the thing any thought much, but then going off from here we have some trouble about getting off from here, it seems like, sometimes. Say if we want to go north, any way, we can make the connections all right going to some places but if we want to go on an extended trip you couldn't get off without going to Latta and going up to Florence in the morning, or Dillon one, and staying there until some time that night.
Q. You don't know the connections?
A. No, sir, I haven't given the connections any thought. But I know that is the way we have to get off.
Q. You don't know what the connections are, though?
A. Only at Latta. I know the trains we meet at Latta.
Q. Are there many persons who go from this vicinity who
125 have to go for treatment in the city hospitals?
A. Not a great many. We have sent some to Baltimore, or to New York.
Q. There is only one connection, though, by which you can send them?

Objected to as leading.

A. Only by this road.

Cross-examination waived.

A. L. CALHOUN, called as a witness on behalf of the plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Where is your residence and place of business?
A. Clio.
Q. What is your business?
A. Mercantile business.
Q. Do you also farm?
A. Yes, sir.
Q. Mr. Calhoun, state your experience and what you have observed as to the experience of the people in Clio and the vicinity about the railroad connections at Latta?

A. Well, the connections in the afternoon are so that the people either have to go to Florence or drive from here to Dillon or go to the Seaboard; go to Bennettsville and go to Cheraw.

Q. Is your observation that there are or are not a considerable number of people who are inconvenienced in that respect?

A. Yes, sir, there is a great many.

Q. What is your own personal experience? How do you get out of Clio?

A. When I go in the afternoon, the last three or four trips I have made, I drove to Bennettsville and went by the Seaboard.

Q. Why did you do that?

A. It was a shorter drive than to drive to Dillon.

Q. How far is it to Bennettsville?

A. Ten miles.

Q. And how far from Bennettsville before you get to the
126 Seaboard?

A. I think it is about 12 miles.

Q. You go over to Kollock on the Seaboard?

A. Yes, sir.

Q. And go north from there? Is it possible, Mr. Calhoun, with your present railroad accommodations for you to go north oftener than once a day?

A. No, sir, not without driving or going to Florence.

Q. A direct connection, I mean? And what time do you have to leave Clio to get that?

A. Seven o'clock in the morning.

Q. Have you had any experience, Mr. Calhoun, about the buying of coupon tickets and mileage books at this office?

A. I never have been able to get them here except once or twice I have had the agent here to get mileage books for me.

Q. You haven't found them regularly on sale?

A. No, sir.

Q. How long do you have to give notice ahead to get these books?

A. About two days.

Q. And he would then get them for you?

A. Yes, sir.

Q. Have you observed whether the Clio people in the ordinary course of travel have to buy tickets elsewhere, that is, to get to other points, and mileage books?

A. I think Dillon is the nearest place where they can buy them.

Q. Mr. Calhoun, have you had any experience on the accommodations furnished between here and Latta, this car? What would you say about it? What about the general cleanliness of the car and facilities for water, water closets, lights at night, and so on?

A. Well, I have seen a great deal better.

Q. Well, tell about what this car is?

A. It is not a very good car. I think we ought to have a better car over here on this road.

Q. What about the cleanliness of the car?

127 A. I don't know hardly what to say about that.

Q. What about the lights at night?

A. The lights are generally very poor.
Q. What about the facilities for drinking water? Have you ever observed that?
A. Sometimes they have water and sometimes they have a cup and sometimes they don't have a cup to drink out of.
Q. Do they give you a glass or cup to drink out of?
A. A tin cup is all I have ever seen.
Q. How many water closets are there on that car?
A. I don't know. I think there are two. I am not certain.
Q. You don't know?
A. No, sir.

Mr. WILLCOX: We object to the questions and answers as to buying tickets at Clio as irrelevant, and anything relating to conveniences at Clio, on the Latta Branch, as irrelevant, and as to the character of the car as irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. Mr. Calhoun, is this correct: Can you leave Clio in the morning and go to Latta and make connection with all southern points at Latta?
A. In the morning?
Q. Yes, sir?
A. All except Columbia, I think.
Q. All except Columbia? Can you leave Clio in the morning, go to Latta and make connections with northern points?
A. Yes, sir.
Q. On what kind of train?
A. The train from Latta north, you mean?
Q. Yes, sir. Does it start from Latta?
A. No, sir; I don't know what kind of train you call it; accommodation train, I guess.
Q. Have you ever ridden on it?
A. Yes, sir.
Q. What kind of train is it, then?
A. It is a mail and express and passenger train, too, I guess.
128 Q. A Pullman?
A. Yes, sir.
Q. On that train, then, if you want to go north, you can leave Clio, go down to Latta in the morning, and make connection with that train?
A. Yes, sir.
Q. That is a good train?
A. Yes.
Q. Any objection to it?
A. The through train is a little faster is the only objection.
Q. Now, your objection to that train as compared with the night train, which is No. 32, is that it is too slow?
A. It is all right for morning but it is not all right for you to go at night.

Q. Then you have no objection to it except as to the time of the day it goes?

A. I guess that is the only objection.

Q. The only objection?

A. And the time.

Q. What time do you mean?

A. It is slower than the through train.

Q. Now, your objection to the night train is that it goes too fast and you want to stop it, make it slower? Isn't that right?

A. No, sir, it doesn't go too fast, I don't think.

Q. Don't you want to stop it at Latta?

A. Yes, sir.

Q. Wouldn't that make it slower?

A. No, sir, I don't see that it would make it any slower.

Q. What makes the other train slower than the fast train—39 and 40, that is, the morning train going north? Isn't it on account of the stops?

A. I guess so.

Q. Then if you would stop the fast train at night at Latta and similar points wouldn't it make it slower? That is, it would take longer to get to its destination, New York?

A. Well, Latta was the only place I was interested in making it stop.

Q. In other words, your desire in the premises is entirely
129 selfish?

A. Well, it would suit me a great deal better if it stopped at Latta instead of Dillon.

Q. It would suit you if the train stopped at Latta and then you wouldn't care about other points? You would rather for it after it stopped at Latta then for it to go very fast right on to New York, if you were going there?

A. Yes, sir, if I didn't want to stop anywhere else.

Q. You would like for the railroad to ignore all other places like Latta that are probably making the same request or would make the same request, that the train stop at their points, wouldn't you, after you once got on the train at Latta?

A. Well, it would depend a great deal on where I was going.

Q. Well, let's assume that you were going to New York. After the train stopped at Latta wouldn't you rather for the train to go on and pass all places like Latta, so as to give you a good speedy trip to New York?

A. Yes, sir, I guess so.

Redirect examination.

By Mr. TOWNSEND:

Q. You state you could make connection on that morning train for all points south except Columbia. How about Sumter and Orangeburg?

A. Well, that road; the road that goes from Florence towards Sumter; all points on that road.

Q. You can't make any of those by that morning train?
A. No, sir, I don't think so.

J. STRAUSS, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Mr. Strauss, where is your residence and place of business?
A. Clio.
130 Q. In what business are you?
A. General merchandise.
Q. What firm is that?
A. E. Sternberger Company. Secretary and Treasurer and manager.
Q. An incorporated company?
A. Yes sir.
Q. Is not that a very large business?
A. Yes, sir.
Q. Are you buyer?
A. I am.
Q. For this concern?
A. Yes, sir.
Q. Do you have to make many trips north?
A. I go at least twice a year.
Q. State, Mr. Strauss, what are your personal experiences and the experience of the general public, so far as you have observed, about the railroad accommodations at Latta?
A. Well, last February—I won't go back several years back—last February I left here at 4.30 in the afternoon and I got to Latta about 6.30 at night. The train was delayed along the road, taking up freights and cotton and so forth.
Q. That is a freight train, isn't it?
A. A combination train—a freight train with passenger coach attached. And I got to Latta and I wanted to make connection in Latta to take that fast train north. I was going to New York. And I got to Latta and I asked Mr. Smith, the agent, and he told me the south-bound train was late and it would be impossible for me to make the connection. The snow was on the ground, it was very cold, and I went to the stable and it was all I could do to get them to let me have a team. He rented me a horse and buggy for two dollars to drive six miles, or six and a half—whatever it is. I couldn't object to that, because I was down there and I wanted to go. I went to Dillon and I suppose I had to wait at Dillon a half an hour on account of the train being delayed that night. It was very rough weather, and a very rough drive. On several other occasions I had to do the same thing—I had to go to Florence instead of
131 driving to Dillon. I didn't care specially for a drive from Latta to Dillon, and I went to Florence and took the train north.
Q. Then, as I understand, parties driving to Dillon are subjected to great discomforts?

Mr. WILLCOX: He hasn't stated that.

898

Q. Well, just state, Mr. Strauss, in your own way?

A. I am merely telling you my experience last February.

Q. Just state about the desirability of that trip?

A. Of course I would much prefer taking the train here and going on at Latta instead of going down there to Florence or Dillon. Not alone myself; there are lots of traveling people who come up here and complain of the same thing. They either have to stay in Latta all night in order to make Dillon and save time, and instead of doing that they very often go to Florence and get supper and come back that night on the fast train to Dillon.

Q. Then, Mr. Strauss, as I understand, you testify that parties in Latta desiring through connections can only get them once in 24 hours?

A. So I understand—is the morning train. They have one train leaving in the morning about 11 o'clock, I guess.

Q. Is the volume of business here large?

A. What do you mean by that?

Q. I mean is this a large business point, in cotton and fertilizers and so on?

A. It is one of the largest, if not the largest, I judge, in the State, for a place of this size—and I have seen a great many places.

Q. Is this a very thickly settled country through here?

A. Yes, sir.

Q. Is it your observation that a considerable number of people have been inconvenienced as you were, or not?

132 A. Yes, sir, I have known of quite a number who have been inconvenienced.

Q. How many bales of cotton are sold here?

A. I think there were sold and shipped from this point last year a little over ten thousand bales.

Q. How much fertilizer do you sell?

A. Do you mean ourselves, or the town?

Q. The town?

A. I suppose between eight and nine thousand tons.

Q. What is about the general volume of business at this place a year?

A. I suppose, I would judge, anywhere between five and six hundred thousand; in that neighborhood. I couldn't accurately say.

Q. As to these trains, trains 39 and 40, what is your observation as to the running of those trains?

A. I can only say taking that morning train, I go to Greensboro and High Point two or three times a year and very often instead of taking the train at Latta I drive to Tatum and make connection at Fayetteville. That train runs very much slower than the other train, of course.

Q. Does it run slower as a whole or between stations?

A. It runs slower between stations, I judge. It seems so to me.

Q. Is it or not a fact that trains 39 and 40 have a large number of express cars and it is a very heavy train?

A. I don't know how many express cars they have.

Q. Is it or not a tremendously long train for a passenger train?

A. I don't think it is any longer than the night train. I don't

think it is as long. Yes, it is as long. The trains coming back from the north, I notice, are larger of an evening than they are going up. up.

Q. What about the car between here and Latta? Have you any remarks to make about that?

A. As far as remarks are concerned, we would like to have
133 a better car. It is not a car that if I could get a better car I would care to ride in that one, but I suppose it is the best the railroad company can do.

Q. What about accommodations, cleanliness, light, water, water closets, and so on?

A. Well, I wouldn't like to remark on that subject, because myself I don't use them on that branch.

Q. What?

A. I never use it on that branch.

Q. Use what?

A. The closet.

Q. What about water?

A. I never drink any water on it.

Mr. WILLCOX: We object to the questions to and answers of the witness relating to the character of the car, relating to the amount of freight business done at Clio, and the character of the connections concerning the Clio Branch, as irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. Mr. Strauss, the morning train going north is a very good train, isn't it?

A. Well, now, in what way?

Q. I mean it is a good train. Here is what I mean to say: Isn't the only objection to that train on your part, that any reasonable man could object to it, on account of its stopping at various points?

A. As far as being a train for through connection, I don't like it. I never have taken that train. I have gone as far as Fayetteville, but no farther, on that train.

Q. It is, however, a good train?

A. Oh, the train is all right, as far as the train is concerned.

Q. That is your personal objection to it?

A. My personal objection is the inconvenience I am subjected to leaving here of an evening; and to take that morning train
134 is out of the question, as I understand the connections are very poor.

Q. Well, speaking of the morning train, isn't your only objection that it stops too many times?

A. I suppose that would be the objection. It must stop often on account of making the connections.

Q. Now, as a matter of reason and common sense, if the train at night was required to stop at Latta and similar points and other stations—if it stopped at Latta—wouldn't it also be made a slow train?

A. Well, it bound to, because they can't run as fast between stations as the train that don't stop at the next station; they have more steam up.

Q. Well, then, the effect would be to make it a slow train?

A. Yes, sir.

Q. And its effect as a fast train would be destroyed?

A. Most assuredly.

Q. You say some times you take train No. 40 and yet you don't go to Latta to take it, because while the connection is made there, but you drive to Tatum?

A. Yes, sir, I do that for convenience. The train leaves here at 7 o'clock in the morning. The train leaves Tatum about 8.49 in the morning and I can leave here about 8 o'clock and catch that train and it doesn't give me a wait of two hours and a half or three hours at Latta and I reach Fayetteville perhaps about half or three quarters of an hour earlier and can get my dinner before the Greensboro train leaves.

135 S. WEILL, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Townsend and testified as follows:

Q. What is your business?

A. Stock business; livery business.

Q. At what point?

A. Clio.

Q. Are you in a position to know anything about the volume of travel from this place?

A. I think so, sir.

Q. What is it?

A. What do you mean by that?

Q. The amount of travel that is done to and from this place.

A. To what point? Latta?

Q. From here to all points?

A. Well, I could estimate it.

Q. What is it?

A. We have on an average here six or eight or ten traveling men every day who come in here in the morning, and a good many people from here go out.

Q. Do you know what are the connections at Latta for points north and south?

A. I think so, sir.

Q. What are they?

A. Well, you can leave here in the morning at 7 o'clock and make connections in Latta both north and south on the regular local passenger train.

Q. Could you go from here to Columbia in the morning?

A. No—with that exception, points on that branch. You make connections for Charleston and points on that branch.

Q. How about passengers going north?

A. They leave here—Most of the passengers who leave this point to go north now, they generally drive and go the other way.

Q. Where?

A. They catch the Seaboard at Maxton or go to Bennettsville and go down to Kollocks.

Q. You drive all of them?

A. Not all of them; some of them.

136 Q. What is the volume of business done by you in that regard?

A. Well, we have somebody nearly all the time, every day or so.

Q. Driving to Dillon or Maxton?

A. To Laurinburg. They generally go to Laurinburg or Maxton or Bennettsville.

Q. What do you charge for those teams?

A. Two dollars for a single team or three dollars for a double team.

Q. To either point?

A. Yes.

Mr. WILLCOX: We object to the questions to and answers of the witness as to connections concerning Clio and the Latta Branch, and as to the driving of teams from here to various points, which we regard irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. Mr. Weill, you don't mean to say that these people who hire teams for these points on the Seaboard in all cases hire those teams in order to make a connection with a fast train north?

A. Not all the teams I hire to these points don't—No, sir; I didn't say that at all. But I do send teams to these point to make these connections.

Q. You don't mean to say that every man who comes to Clio—traveling man or otherwise—and every man who leaves Clio—traveling man or otherwise—makes his advent into and exit out of this town by means of a through fast mail train north and south?

A. No, sir, I didn't say that at all. I was speaking of those who do go north when I said what I did.

Q. You don't mean to say that all of them do go north?

A. No, sir.

137 Plaintiffs announce that they rest here, and announce that they would await the testimony to be submitted on the part of the Defendant Company before they would decide whether they would offer any testimony in reply. The Defendant Company announced that they expected to offer testimony, and by agreement the reference adjourned to meet the first week in September at Wilmington, N. C., or such place as may be selected later, to take testimony to be offered by the Defendant Company.

138 [Endorsed:] State of South Carolina Marion County C. W. Garris *et al.*, as Railroad Commissioners Plaintiffs *v.* The Atlantic Coast Line Railroad Company Defendant Testimony taken in reference held at Latta and Clio, S. C.

139 Pursuant to adjournment reference was held at Wilmington, N. C., September 8th, 11:00 o'clock, A. M.

Present: P. A. Willcox, J. M. Johnson and Henry Mullins, representing the defendant Railroad Company. Assistant Attorney General W. H. Townsend, representing the Plaintiffs.

WILLIAM J. CRAIG, a witness for the defendant, being duly sworn, testified:—

Direct examination.

By P. A. WILLCOX, Esq.:

Q. Mr. Craig what is your position with the Atlantic Coast Line Railroad Company?

Ans. General Passenger Agent.

Q. As such have you looked into the question before this Court as to stopping trains No. 32 and No. 35 at Latta?

Ans. I have.

Q. What kind of trains are trains No. 32 and 35 of the Atlantic Coast Line Railroad Company?

Ans. They are limited through trains for the handling of mail and through passenger traffic.

Q. From what points to what points?

Ans. From New York City to Port Tampa, Florida.

Q. Which is the North bound train?

Ans. No. 32.

Q. Which is the South bound train?

Ans. No. 35.

Q. What connection, if any, do those trains make at Port Tampa, Fla.?

Ans. Sundays, Tuesdays and Thursdays, they make immediate connection with the Peninsula & Occidental Steam Ship Company for Havana, Cuba.

Q. Do I understand that both No. 32 and No. 35 make that connection? Do the boats run only on those days?

Ans. They only depart from Port Tampa on those days.

Q. When do they arrive?

Ans. Thirty-two affords connection on Wednesdays, Fri-
140 days and Sundays at Port Tampa with the Steamship line. And on Sunday and Wednesday mornings at Jacksonville, Fla., with the Florida East Coast Railway with the same steam ship connection through Miami, Fla.

Q. Have you stated simply the connection between the Steam Ship lines mentioned and "32" going North, or have you also stated the connection between the Steamship Lines in question and "35" going south?

Ans. I have shown the connection at Port Tampa for "35" South. I have not shown the connection through Miami on "35."

Q. State that please?

Ans. Under the present schedule—the summer schedule, we do not make immediate connection with the East Coast Line Railway at Jacksonville.

Q. Mr. Craig, what class of travel do you have on train- "32" and "35?"

Ans. It is considered high class tourists' travel, through travel almost exclusively.

Q. From what points to what points?

Ans. From points North of Richmond to points south of Savannah and Charleston.

Q. What are the other general purposes of that train if any?

Ans. It handles the mail contract with the United States Government to Florida, Key West and Cuban points.

Q. Considering the economical condition of the Atlantic Coast Line, and by that I mean the length of the Atlantic Coast Line Railroad Company and the volume of its through travel and business generally and also in relation to competitive lines for through travel, what would you say generally as to the necessity of the Atlantic Coast Line Railroad Company to run trains #32 and #35.

Objected to on the ground that the answer could be nothing but the expression of opinion on the part of the witness. Submitted that witness should state facts upon which the opinion is based and not the opinion.

Q. In a general way, as General Passenger Agent of this Railroad, just state facts; state in a general way and the details
141 and your reasons for it, based on points of your own knowledge, the necessity of running trains #32 and #35 as fast trains for the purpose of handling through travel and the United States Mail?

Ans. I have spoken of the contract which we have for handling the United States Mail. As to passenger traffic, the public demands fast limited service. This is especially true of the Florida tourist travel. With the building up of resorts like Charleston, Augusta, Camden and the Florida resort- these people, this travel, demand high class limited trains. The Atlantic Coast Line was the pioneer in this character of travel, having operated these fast trains years before we had the competition of the Southern and Sea Board. The tourist would not use slow or indifferent service. He will seek other resorts and other sections that afford him these facilities and accommodations. The tourist in New York, looking for a place to spend a few weeks or months in winter, has available the resorts of the Gulf Coast, California, Texas, Mexico, to say nothing of the splendid facilities offered by the Steamship routes to the Bahamas, and Nassau, and other points. Unless we can offer the facilities of fast, through service the Southern resorts would not be considered by him. I will state that this business has developed to such an extent that, whereas, the Atlantic Coast Line ye..rs

back was the only Railroad that handled this character of traffic. We now have the strong competition of the Southern Railway and the Sea Board Air Line, which, by the way, is a shorter route in distance and which makes faster time than the Atlantic Coast Line does between New York and Jacksonville. This has forced us to keep our trains up to the highest standard to control our share of this important and lucrative travel.

Q. Could that business, Mr. Craig, be taken care of if trains #32 and #35 were made slower trains by frequent stops?

142 Ans. No sir; They would seek other lines undoubtedly.

Q. Would there be any necessity for these trains for the purposes described by you if they were not fast trains?

Ans. No, sir, and we are compelled, during the height of the season to add other trains,—trains 37 and 38 known as the New York and Florida special.

Q. What time do they run?

Ans. They run from about the 10th of January to the middle of April,—during the height of the season. To show you just what a factor this through travel is to the Atlantic Coast Line during the month of April, north bound train No. 32 averaged one hundred through passengers between Jacksonville, Fla., and Richmond, Virginia.

Q. Would there be any necessity to have the fast trains # 32 and # 35 equipped as they are equipped if it was not for the through travel?

Objected to as calling for an opinion of the witness.

Ans. With the increased wealth of the country and the building up of the additional resorts, as I have stated, in the central south, the travel has wonderfully increased. We are handling a large number of people to Charleston, Augusta and some to Camden; and we have recently opened up a resort at Pinewood, near Orangeburg, that is attracting quite a number of Northern tourists. We find from our experience in Florida that the tourist will not take the local train service that stops at the various local points in Florida, I mean that makes a stop at every point on the route; but they insist on our stopping these through trains for their accommodation.

Q. If you did not have the through travel would trains # 32 and # 35 be necessary simply for the purpose of accommodating the local travel.

Objected to as calling for an opinion of the witness.

Ans. No, sir, they would not.

143 Q. Is there any difficulty in maintaining the fast schedule of #32 and #35?

Ans. There is great difficulty I am sorry to say.

Q. Is it necessary to maintain that schedule?

Ans. It is absolutely necessary to do it on account of the mails. Several complaints have come to us from the P. & O. Steamship Company on account of the delay in #35 reaching Port Tampa, stating that they were unable, with the frequent delays of this train,

to maintain their schedule for the delivery of the mail to the Cuban Railways and Havana.

Q. What is the equipment of those trains?

Ans. In order to maintain the high speed of those trains they do not handle express, they handle only mail; the most limited second class accommodations, not exceeding twenty; a first class coach and in the winter time, from six to seven Pullmans, with a Pullman dining car. It will be seen that this is strictly a first class train and operated on those lines for the accommodation of this tourist travel,

Q. But for the through travel could that train be operated without loss?

Ans. No, sir, not according to my judgment; I don't think it could be.

Q. I am speaking of the train as equipped?

Ans. No, sir, absolutely could not be.

Q. What was the purpose of putting a dining car on the train?

Ans. The tourist- just demanded the best service we could give them. That dining car service is operated at a big expense to the company every month.

Q. You say the dining car service is operated at an expense?

Ans. Yes a big expense.

Q. But the service was demanded by the tourists?

Ans. We have to maintain it at a big expense. We cannot curtail the Pullman people, who operate the car for us in their
144 menu,—the tourists requiring this service to be of the highest class.

Q. Does the dining car service serve any purpose in regard to increasing the speed of the train?

Ans. It serves to decrease the speed of the train. I mean its weight. Of course, it adds one car to the train but it saves the meal stops.

Q. What were the meal stops before the dining car service was introduced?

Ans. They were generally the meal stops from twenty to twenty-five minutes.

Q. Now the dining car service saves those stops?

Ans. Yes, sir; and enables us to reduce those stops to very short periods.

Q. For only necessary purposes?

Ans. Yes, sir.

Q. You avoid the stops so far as meals are concerned?

Ans. Absolutely.

Q. What set of trains are # 39 and # 40?

Ans. Local trains which are provided for the local travel. They are operated through from New York to Port Tampa, Florida.

Q. What kind of trains are they as to their equipment?

Ans. They are equipped with first and second class cars,—with full first and second class cars, and through Pullman sleepers, mail, express and baggage cars.

Q. Daily trains?

Ans. Operated daily each way.

Q. Mr. Craig, do you know the passenger accommodations that are afforded the people at Clio and Latta, South Carolina?

Ans. Yes, sir.

Q. I would be glad, Mr. Craig, if you would locate yourself mentally, at Clio, S. C., in the early morning and trace the train service from that point during the day. That is to say, I wish you would take it up this way; I wish you would take the first passenger train out of Clio, S. C., and follow that train during the entire
145 day, giving the arrival and departure of that train from any point and show the connections that can be made by that train at every point, where it stops to take on and put off passengers?

Ans. I have prepared here for my special reference a crude map of the schedule from Clio to all points served by the Atlantic Coast Line; and I have drawn in red the train service showing the A. M. departures from Clio, and in blue the P. M. departures from Clio. Leaving Clio at 7:00 A. M. arrive at Latta 7:45 A. M. (I am following the red line now), arrive at Dillon 8:05 A. M., arrive at Pee Dee 8:55 A. M.; arrive at Florence 9:35; arrive at Charleston 1:20 P. M.; arrive at Savannah 6:45 P. M., leaving Savannah 6:55 P. M.; arrive at Waycross 10: P. M.; arrive at Montgomery at 8:05 A. M., serving intermediate points. At Montgomery prompt connection is made in the Union depot for New Orleans, Pensacola, Mobile, and Texas points and also for points on the Mobile and Clio Railroads and the L. & N. North of Montgomery. I have given the arrival at Waycross at 10:00 P. M., leaving Waycross at 10:00 P. M. arrive at Tifton at 11:45 A. M., where through service is available to Atlanta and the West. The train arrives at Albany, Georgia, at 2:15 A. M.

Leaving Pee Dee at 10:22 A. M. connection is made at Chadbourn for Conway, arriving there at 1:50 P. M.; continuing arrive at *at* Wilmington at 1:20 P. M. connection being made at this point for New Bern and intermediate points. I have quoted the arrival at Florence at 9:35 A. M. Leaving Florence 9:45 A. M. arrive at Darlington 12:35 noon, at Hartsville 1:45 P. M., arrive at Cheraw 11:29 A. M., Wadesboro 12:30 noon.

Leaving Latta at 10:30 A. M. arrive at Fayetteville 12:25 noon, where connection is made for Sanford, and points on the Southern Railway and through Greensboro and beyond; also for points between Fayetteville and Wilmington; continuing; this train arrives at Richmond 7:45, P. M., Washington 11:40 P. M., Balti-
146 more 1:43 A. M. Philadelphia 4:25 A. M. New York, 7:15 A. M.

Leaving Darlington at 10:30, A. M., arrive at Bennettsville 12:45 noon, and going on arrive at Fayetteville at 7:15.

Q. Mr. Craig, I would like for you to give the connections made in the same way at various points by the train leaving Clio in the afternoon?

Ans. Leaving Clio at 4:30 P. M., arrive at Latta 6:05 P. M., arrive at Pee Dee at 8:05 P. M., arrive at Florence 7:55 P. M., arrive at Sumter 9:30 P. M., arrive at Columbia 10:55, P. M.

Leaving Florence at 8:15 P. M., arrive at Darlington 8:45; Ben-

nettsville, 9:40 P. M., Gibson 10.30 P. M. arrive at Hartsville 9:30 P. M.

Leaving Pee Dee at 8:37 P. M., arrive at Wilmington 11:45 P. M. Leaving Florence at 8:25 P. M. arrive at Charleston at 11:40 P. M., Savannah 2:40 A. M., Waycross 6:05 A. M. Jacksonville at 8:40, serving intermediate points, arriving at Port Tampa 7:25 P. M., arrive at St. Petersburg, Fla., serving intermediate points, at 9:35 P. M., arrive at Miami, Fla., serving intermediate points, at 7:20 P. M.

Connection is also offered from Union Station at Jacksonville for all points on the Sea-Board Air Line in the State of Florida. Continuing the service from Waycross at 6:35 A. M., arrive at Montgomery 6:15 P. M., serving intermediate points. At Montgomery the same connections are afforded at Union depot for New Orleans, Texas, Mobile, and points on the L. & N. Railroad North and South of Montgomery on the Mobile and Ohio Railroad.

Parties from Clio and Latta can also avail themselves by train # 32 for Fayetteville, Wilson, Rocky Mount, Richmond, Washington, Baltimore, Philadelphia and New York by taking the schedule shown at Florence, and boarding train # 32 at Florence; train # 32
147 leaves Florence at 8:00 P. M. arrives at Richmond at 4:07 A. M., Washington 7:54, A. M., Baltimore, 9:09 A. M., West Philadelphia 11:22, A. M., New York at 2:00 P. M.

Q. Is it not a fact that in addition to the connections you have described on the afternoon, leaving Clio and going to Florence, S. C., that after the arrival of train No. 35 at Florence connection can be made for all points South and West via Charleston, Savannah and Augusta, leaving Florence at about 4:00 o'clock A. M.?

Ans. Yes sir.

Q. Is it not a fact, Mr. Craig, that the only one connection that is not made either in the morning or afternoon by the train you have described is the train which leaves Florence at 8:00 A. M. for Columbia, S. C.?

Ans. That train only runs to Sumter but it affords connection at Sumter.

Q. Is or not that the only train that the two trains you have described do not make connection with?

Ans. Yes sir.

Q. What additional expenses are passengers going North put to if on leaving Latta they prefer going North on No. 32, rather than by No. 40?

Ans. Leaving Clio or Latta in the afternoon, connection is afforded at Florence with train No. 35. The additional cost would be $1.42 above what the rate from Latta to New York would be; in other words; parties can go from Latta to Florence and board train No. 35 at an additional cost of only $1.42 above the price of a ticket from Latta to New York. The following connections are afforded to Clio taking the noon arrival: Leaving New York at 9:25 A. M., Philadelphia 11:55 A. M., Baltimore, 2:12 P. M., Washington 3:25 P. M., Richmond 7:25 P. M. arrive at Dillon 3:05 A. M.

Parties can leave here arriving at Latta at 11:15 A. M., Clio 12:45,

noon. Leaving Wilmington at 6 A. M., arrive at Pee Dee 9:05 A. M., arrive at Latta at 10:30 A. M., and Clio at 12:45 noon.

Leaving Port Tampa at 8:25 A. M., Jacksonville at 8:05 P. M., Waycross at 10:10 P. M., Savannah at 1:35 A. M., Charles-
148 ton at 6:15 A. M., Lanes 8:05 A. M., Florence 9:45 A. M., and arrive at Latta 12:45 Noon.

Connection is made at Jacksonville with the above train from Fort Meyers, Florida, St. Petersburg, Florida, and from all points on the Seaboard Air Line in that State.

Leaving Brunswick at 4:10 connection is also made with this through train at Waycross. Leaving Albany at 2 P. M. connection is also afforded at Waycross with this through train.

Leaving Montgomery at 6:50 A. M., where connection is made from all points in Texas, Louisiana, Mobile, and Pensacola and points to the East and West thereof, arrive at Waycross at 6:05 P. M., connecting with this through train 40, arrive at Clio at 12:45 M. Leaving Columbia at 6:45 A. M., Sumter at 8:10 A. M., arriving at Clio 12:45 M. Leaving Gibson at 6 A. M., Bennettsville at 7:05 A. M., Hartsville at 7:05 A. M., Darlington 7:50 A. M., you reach Clio at 12:45 M.

For the P. M. Arrival at Clio 10:05 P. M., the following connections are reported: Leaving Port Tampa, Fla., at 7:25 P. M., Fort Meyers 2:45 P. M., you reach Jacksonville at 7:55 A. M. Leaving Jacksonville at 8:50, A. M., Brunswick at 6:10 A. M., Savannah at 1:05 P. M., Charleston at 5:20 you arrive at Florence at 7:50 P. M., connecting for Clio at 10:05 P. M.

Leaving Columbia at 4:55 P. M., where connection is made with through train from Greensville, S. C. and intermediate points and with all points on the Southern Railway north of Columbia, you reach Clio at 10:05 P. M.

Leaving Augusta at 2:25 P. M., where connection is made with through train via. Atlanta from all points West you reach Clios at 10:05 P. M. serving intermediate points like Denmark, Orangeburg, Sumter, etc.

Leaving New Bern, N. C., at 9:10 A. M., Wilmington at 3:45 P. M., where connection is afforded to all points North of
149 Wilmington, you arrive at Clio at 10:05 P. M.

Leaving Conway at 2:50 P. M., you reach Clio at 10:05 *O*. M. Leaving Wadesboro at 4:10 P. M., Cheraw at 5:10 P. M., Darlington 6:24, P. M., Hartsville 4:15 P. M., arrival is made at Clio at 10:05 P. M.

Leaving New York at 9:25 P. M., Philadelphia 12:15 at night Baltimore 2:37 A. M., Washington 4:30 A. M., Richmond at 9:05 A. M., and intermediate points arrive at Clio at 10:05 P. M.

Leaving Albany, Ga., at 2:15 A. M., connection is afforded with train # 32 which would provide for arrival at Clio at 10:00 P. M.

It is impossible for me to give all the connections that are afforded by these trains at intermediate points. For instance, at Richmond, with diverging line at Columbia and Savannah and Charleston; and the same may be said at other junction points, where connections are afforded.

Q. Mr. Craig, is your general testimony on this subject of connections shown on these two maps you have prepared?

Ans. Yes sir, there has been just one mistake which you pointed out to me that I have not shown and that is that Bennettsville connection which I could put in and that Conway connection which I have over-looked.

Defendant introduces maps which are marked Exhibit "A" and "B."

Q. In describing these connections that are afforded to Clio, S. C., are not all the connections you have described also afforded Latta, S. C.?

Ans. Yes sir.

Q. Do you know the last census population of Latta, S. C.?

Ans. Yes sir, I have it taken from the United States Census, a copy of which I have. The population according to the census of 1900 was 453.

Q. What was the population of Clio?

Ans. 508.

150 Q. What is the population of intermediate points between Clio and Latta?

Ans. The only point shown is Dunbar, 115 people, the United States Census report showing that the other points are less than 50 population and are therefore not given.

Q. What is the census population of Kingstree, S. C.?

Ans. 706 people.

Q. How many passenger trains a day in all directions afford to the people of Latta, S. C., an opportunity of going off by boarding a train?

Ans. Eleven.

Q. The following trains arrive at Latta from Clio: At 7 A. M., 6:05, from all points South, 10:30 A. M. from Dillon 7:50 A. M., Pee Dee and points beyond 9:35 A. M. and 9:05 P. M. The following trains depart from Latta: For Clio 11:15 A. M., and 9:18 P. M., 7:01 P. M., for Wilmington and points South and West; 8:30 A. M., Pee Dee and points beyond 7:40 P. M., for Pee Dee and points beyond. In addition to which there are two local freight trains provided with passenger service leaving Latta at 9:00 A. M., for Fayetteville and intermediate points and at 7:01 P. M., for Florence and intermediate points.

Q. What is the census population of Marion, S. C.?

Ans. In 1900, 1831.

Q. Isn't it a fact that the only accom-odation afforded at Marion, S. C., is a local passenger train each way twice a day?

Ans. There is only a double daily service at Marion.

Q. You have described No. 35 as leaving New York at 9:25 A. M.?

Ans. Yes sir.

Q. In the movement of that train South please let us know how many points larger than Latta, S. C., and the census population of each point, at which this train No. 35 does not stop?

Ans. Rahway, N. J., 7935, people; Metuchen, N. J., 1786; New

Brunswick, N. J., 2006; Morrisville, Pa., 1371; Bristol, Pa.
151 7104; Darby, Pa. 3429; Glenolden, Pa. 873; Norwood, Pa.,
1286; Moores, Pa. 1050; Ridley Park 1234; Chester, Pa.,
339888; New Port, Del., 657; Elkton, Md., 2542; North East, Md.,
969; Perryville, Md., 770; Havre de Grace, Md., 3423; Aberdeen,
Md., 600; Benning, D. C., 500; Manchester, Va., 9715; Elm City,
N. C., 560; Smithfield, N. C. 764; Hope Mills, N. C., 881; Kings-
tree, S. C., 760; Lake City, S. C.,——

Q. Now please name the junction point at which you do not stop;

Ans. We do not stop at the following junction points between Richmond and Jacksonville, Fla., on the Atlantic Cost Line with trains 32 and 35; Chester, Va., Pender, N. C., Smithfield, N. C., Hope Mills, Parkton, N. C., Elrod, N. C., Contentnea; Latta; Pee Dee; Ravenels; Green Pond, S. C.; and Hortense, Ga.

Q. Mr. Craig, please give us explanation of the stops of 32 and 35 between Richmond and Charleston, S. C.?

Ans. Petersburg, the first stop South of Richmond being a commercial center; Emporia the next stop, 63 miles from Richmond on account of its being a railroad crossing; Weldon, 83 miles, it is a junction point, and Rocky Mount, 120 miles, a large town; South Rocky Mount, we change crew and engine and inspect the train; Wilson, N. C., a large town, and to afford connection from Wilmington and intermediate points; Selma, N. C., a Railroad Crossing, Dunn, N. C., a flag stop; at Fayetteville, N. C., we stop for water and to inspect the train, is also a large town; Dillon, S. C., a flag stop; Florence, S. C., to change engine and crew; Lanes, S. C., a junction with the Georgetown and Lane's Railroad; Charleston, S. C., a commercial center; Yemassie, a Railroad Crossing; Ridgeland, a water stop; Lane's is also a water stop; and mail for Georgetown and western railroads. Leaving Charleston on train 32 the first stop is Lane's,—stops as a railroad junction and for the mail and water;
Florence changes engines and crew and inspect the train;
152 Dillon, flag stop; Fayetteville, a water station and inspection;
Dunn, flag stop; Selma, railroad crossing; Wilson large town;
South Rocky Mount, change engines and crew, Rocky Mount, large town; Petersburg, commercial center; Richmond, end of run. The stop at Rocky Mount is made to make connection with the numerous branches the Atlantic Coast Line have at that point.

Q. What roads go in to Petersburg besides the Atlantic Coast Line?

Ans. The Norfolk & Western and Seaboard Air Line.

Q. Mr. Craig, it has been testified to in this case that there was a request made of the Atlantic Coast Line Railroad that you put coupon tickets on sale at Latta, S. C., and that the promise was made that it would be done and that the promise had never been carried out?

Ans. We have on sale at Latta in addition to local tickets, interchangeable mileage tickets, local and special baggage checks, local prepaid order coupon tickets to all points on the Southern Railroad, via, Selma; coupon tickets to Washington, D. C., and coupon tickets to all points on the Pennsylvania Railroad, via. Washington. This in addition to a full supply of local tickets that are available to any

points on the Atlantic Coast Line throughout its entire mileage; also ministerial tickets, round trip tickets, etc.

Q. Is that a fair supply of tickets for ordinary travel?

Ans. Much more than you use.

Q. Since when were those tickets put on sale?

Ans. The mileage tickets left this office September 14th, 1904; the coupon tickets left this office September 13th, 1904.

Q. I would like to ask you Mr. Craig, what fixes the schedule or leaving time of "32" in leaving Port Tampa?

Ans. It is fixed by the arrival of the P. & O. Steamship from Havana and Cuban points.

Q. How do you account for the schedule of "32" through
153 the State of Florida, being slower than at other points if it is?

Ans. The departure from Port Tampa being fixed with relation to the arrival of the P. & O. Steamship bringing the Cuban Mail, the departure of "32" is also fixed at Jacksonville, Fla., by the same cause, viz:—The mail of the Steamship Company through its Miami service—"32" being scheduled to leave Jacksonville immediately upon the arrival of the Florida East Coast train "98," bringing the mail from Miami. An examination of the schedule of the arrival of the P. & O. Steamship both at Port Tampa and at Miami will show a certain amount of Leeway. This is necessarily on account of the uncertainty of ocean travel. Their service with regard to the time cannot be fixed exactly and then there is considerable time necessary for the proper examination of baggage by custom house authorities. This sometimes consumes as much as two or three hours.

Q. I have not asked you the details of the stops made by No. 32 and No. 35 south of Savannah with the same exactness as I have asked you concerning the stops made between New York and Savannah, if these stops below Savannah are the same character as the stops North of Savannah, I would be pleased for you to so state if there is any difference in the character of the stop, I would be pleased for you to so state and give your reason for the same?

Ans. Train No. 35 bringing as it does, tourists from the North must of necessity, begin its distributions of these people after its arrival in this Southern territory. I recall a stop at Ridgeland, S. C., and Ways, Ga., where there are large clubs owned and controlled by Northern people who come South in winter for shooting and recreation purposes. Some of the stops between Savannah and Jessup are made necessary by local condition,—there being no morning departure from Savannah that will enable these people to reach these points.

Q. Mr. Craig, from a standpoint of an expert in your line
154 what would you say *after* the passenger accommodations afforded at Latta, S. C., as compared with other smaller points.

Objected to, first because it has not been shown that Mr. Craig is an expert; second, that it is not a matter of expert testimony and the witness should be confined to a statement of facts leaving the matter of the efficiency of the service to be determined by the Court.

Q. What road are you General Passenger Agent of?

Ans. The Atlantic Coast Line Railroad.

Q. What experience did you have in that department of railroad work before you came to the Atlantic Coast Line?

Ans. I have been in the General Freight and Passenger office for about twenty-one (21) years.

Q. How long have you been with the Atlantic Coast Line?

Ans. I have been here in this position for over three years.

Q. Now please go on and answer that question I asked you?

Ans. I think the service at Latta is ample to meet all the conditions of travel.

Q. As compared with other smaller points?

Ans. I think it enjoys superior transportation facilities over similarly located points.

Q. As compared with Marion, S. C.?

Ans. It has better passenger accommodations.

Q. As compared with Kingstree, S. C.?

Plaintiffs' counsel objects to this line of examination on the grounds that it calls for the opinion of the witness.

Ans. It has better passenger condition-. It has more frequent train service than Kingstree.

Q. Isn't it a fact that that would apply over the entire system?

Ans. That is a hard question to answer.

155 Q. Considering the passenger accommodations at Latta, S. C., isn't it a fact that the passenger facilities at Latta are better than at points similarly located of the same size and even larger points?

Ans. It has undoubtedly. I have before me here a statement prepared of all the branch services on our system and from that statement the service is undoubtedly as good as the best and better than a large majority of them.

Counsel for plaintiff- objects to the foregoing questions as to the efficiency of the train service at Latta on the ground that it is the opinion of the witness.

Q. What is the importance of "32" and "35" relative to such trains on other roads? I desire to know if that is a very important train by reason of the length of its run as compared with other roads? Is it, in other words, a *cert* short train considering the distance it travels or a very long train as compared with other through lines in the United States?

Ans. The Florida & West India Limited Trains "32" and "35" form one of the longest continued schedule trains in the United States. The distance is something over Twelve Hundred Miles, exceeding the distance from New York to Chicago. I think it ranks as one of the fastest and longest continuous trains in this country.

Q. How about its equipment?

Ans. It ranks with the very best.

Q. Have you any other trains equipped as well as #23" and No. 35, unless they are used as through trains?

Ans. No sir, trains #32" and "35" is one of th heaviest trains

run in the United States. I mean by heavy, it carries a larger number of cars.

Q. I understand you to say it was necessary for the continuance of those trains for a very fast schedule to be maintained,—is it a very difficult thing to maintain the schedule as required?

Ans. It is a very difficult matter.

156 Q. Can you answer this question? If trains No. 32 and No. 35 were required to stop in its run at Latta, S. C., and points similarly situated what would be the increased length of the schedule?

Ans. I think you had better ask that question of Mr. Borden. He is a practical man that operates that department and can give you the details better than I *cna*.

Cross-examination:

Q. In giving the figures from the United States census as to the populations of Latta, Clio, Marion and other towns, those figures include merely the inhabitants living within the incorporate- limits?

Ans. They are gathered from United States Census and I imagine they are those in the incorporate- limits only.

Q. And does not include the people in the surrounding country?

Ans. No sir.

Q. You state that trains #32 and #35 stop at Dillon, Florence, Lane's, Charleston, Yemassee, Ridgeland and Hardeeville in South Carolina, do they take and carry local passengers between these points?

Ans. We would carry passengers.

Q. To and from these points?

Ans. Yes sir. I do not think we would to Yemassee. I do not think we stop at the station at Yemassee. You must understand that while law forces us to stop at Yemassee it does not force us to take passengers except people would board the train any how. At Hardeeville we stop to register and passengers would board the train there whether we sold them tickets or not.

Q. Train No. 35 going South stops at the station at Burroughs, McIntosh, Walthourville, Ludowici, and Jessup? Owing to local condition there being no other morning train out of Savannah, I believe that is the reason?

Ans. That is one of the reasons. So far as Ludowici is concerned, that is a crossing where we are compelled by law to stop.

157 Q. It does local business between these stations?

Ans. I would prefer Mr. Borden to answer that question when he gets on the stand. We handle that business on "35" but not on #32.

Q. I believe you have already stated that South of Jacksonville, between Jacksonville and Port Tampa, both #32 and #35 make all the local stops?

Ans. Thirty-five makes practically all.

Q. And does the local business there?

Ans. They are nearly all flag stops.

Redirect examination:

Q. Have you any further explanation other than you have already made as to stops made by #35 in Florida?

Ans. Thirty-five does an enormous business in Florida,—very much larger than it does through the Carolinas.

Q. Have you a report of the passenger tickets sold at Latta?

Ans. I have it here ready.

H. M. EMERSON, a witness for Defendant, being duly sworn testifies:

Direct examination:

Q. What is your business?

Ans. I am Traffic Manager of the Atlantic Coast Line Railroad Company.

Q. How long have you been with the Atlantic Coast Line?

Ans. With the exception of six months since 1876.

Q. Have you any reasonable familiarity with the running of trains #32 and #35 on the Atlantic Coast Line?

Ans. Yes sir.

Q. What is the primary object of those trains as distinguished from other trains?

Ans. They are what we consider through trains used to accom-odate long distance travel.

Q. What is the relation of those trains to the United States Mail?

158 Ans. They carry mail, not only to our local territory, but to the section of country served by our line, including the Cuban Mail.

Q. What is the necessity, so far as the Atlantic Coast Line Railroad is concerned, for running this train?

Ans. With your permission, I will go back to about the time these trains were inaugurated. That was sometime in '90 or '92, I think as for #32 and #35. Our first effort, and when I say our first effort I refer to the effort of the Atlantic Coast Line to accom-odate or take care of the Florida travel and the travel through the larger South Atlantic Cities, also to accom-odate the mail. We operated what was known as No. 27, south bound. That train was in its day, possibly the fastest train that had ever been up to that time operated in the South. There was in the mind of the transportation people a chance to develop a tourist business in the South-east Georgia, and the lower part of South Carolina, especially and Charleston; And it was hoped that that business would not only pay the transportation line a revenue for the expense of its equipment but also aid in the development of that section by the distribution of money which they might spend during their stay in that territory. It would also attract attention to the favorable climatic condition and the soil to the raising of early vegetables, which was at that time, on an extremely limited scale. In possibly '86 or '85, although the Atlantic Coast Line at that time was by far the shortest route to the south, and when I refer to the South I mean the territory served by this line and its connection at that time south of Charleston, the owners

of the property decided to build what is known as the Short Cut and on February 16th, 1902, that line between Contentnea and Pee Dee, S. C., was completed, and on March 26th, of the same year the line was opened for business. As I have already stated at that
159 time, the Atlantic Coast Line was the short line between Florida and Southern Coast Cities and New York and our great commercial Cities in the East. Prior to that time, a Steam Ship Company had been organized for the purpose of operating a steamer line between Port Tampa on the West Coast of Florida and Havana, Cuba. There was little or no travel or traffic between the Island of Cuba and the State of Florida; but there was quite a movement between Havana and New York and the East. Up to the time of the establishment of this steam ship line to which I have referred, the freight and passenger movement was altogether by steamer direct. When I mentioned the fact that there was little or no travel or movement of freight and traffic between Florida and Cuba it was to bring out the points and the establishment of the Steamer Line rested upon the establishment of some Rail schedule to this eastern territory. The Plant System, Atlantic Coast Line, or at that time the road forming what is now the Coast Line, the Richmond, Fredericksburg, Potomac and Washington, reaching from Richmond to Washington formed what was known as a through passenger line under an agreement which provided for the operation of these fast trains to serve, I might say, Florida and Cuba, incidentally, Charleston and Savannah, for without this development which we hoped for in Florida and Cuba the line could not be maintained if stopped at Charleston. There was not sufficient business in the movement between the East and Charleston to justify the operation of such fast trains. Therefore the stock-holder of the Atlantic Coast Line property realized the importance of the fastest schedules between Charleston and the territories south thereof, including Cuba*m* and Eastern Cities, not only to secure the passenger and freight traffic but to improve the mail service as against Coastw*ays* St-am Ship competition and also as against the threatened competition through the building of shorter rail lines between t*ge* sections named and recognizing the importance of quick transportation and shorter mail route as an important factor in the development of the territory described, the people of said territory depending
160 largely on eastern markets for the consumption of their farm products consisting of fruits and vegetables, they therefore decided to build this Short Cut*t*, one hundred and forty-one (141) miles, thereby shortening the distance and reducing the time. There has been a local development along that line which was expected. The building, however, of the line was primarily for the purpose of shortening the distance so as to reduce the time between the sections connected. In that connection, I would like to refer to the General Manager's report at the stock holders' meeting, November, 1891: "In Feburary, 1891, contracts were let for the completion of what is known as The Cut Off and this important branch will be opened in January. This branch, in connection with the Florence Railroad and the other road comprising the Atlantic Coast Line, will constitute the shortest practicable route between New York and Charles-

ton. In November, 1892, the General Manager reports to the stockholders as follows: "The closing of this gap completes what is known as the Short Cut, a line of 140 7/10 miles in length extending from Contentnia station on the Wilmington & Weldon Railroad to the Great Pee Dee River on the W. C. & A. Railroad. The completion of this line shortens the distance between Richmond and Charleston 61.2 miles. Through trains will be diverted during the coming winter." Now in the report to the Stock-holders made by the General Manager and the only report that touches on the building or completion of this Short Cut there is no mention whatever made as to local service or local territory served by this Cut Off but the one thought in their minds from these reports was the question of shortening the distance as between New York and points beyond their own line. Now in arranging a fast through passenger service between New York and Cuba, there are practically two controlling factors:

161 First, the depart*ment* of the Steamer from Port Tampa, at which point the Rail line ends, and the water route begins; and that time is practically fixed by the necessity of arriving at Havana in time to connect with trains for the interior points and thereby avoid the delay to mails and passengers destined to interior points on the Island. The leaving time from New York depends upon the time the Pennsylvania Road can serve that train with prompt ferry connections from the New York City side to the Jersey City side and at the same time send it out of the Jersey City shed and not disarrange schedules for their numerous trains for the North, East, South and West. When these schedules are considered in the fall and spring, we are compelled to accept such time as the Pennsylvania Company will fix for leaving New York and arriving at Washington and leaving Washington and arriving at New York. The present leaving time of No. 35 is anything but satisfactory, to us. In winter time, when our heaviest passenger business is moving the hour is entirely to- early. Passengers living in the upper part of the City and as you know, that represents the residential portion of the City and down town being the business portion of the City, are compelled to get up before day, so as to reach West 23rd Street Ferry in time to take our No. 39 train South. It is not a satisfactory train out of New York. As it comes south, however, the time growing later, it reaches Philadelphia and connects there with the large number of points in the upper part of the State above New York and Pennsylvania served by the Reading & Lehigh Valley R. R. and the Penn. R. R. Should we undertake to leave New York later than the present schedule, we could not connect with the ship at Port Tampa. It would be impossible for us to make that connection, there being a margin of only ten or fifteen minutes on the present schedule. The same condition practically governs the North bound with this exception: That No. 32, which is the companion

162 train leaves Jacksonville after the arrival of the two Steamer trains, one from Port Tampa over our line, and one from Miami over the Florida East Coast Road. Since the establishment of a Steamer Line between Port Tampa and Havana, there has been established a line between Miami and Havana. Both of those lines

serve Key West. There is also a Steamer Line from Miami to Nassau,—to Nassau in winter months. The trains from Miami and Port Tampa are scheduled to leave,—making connection with the boat and connecting at Jacksonville in time to connect with No. 32 leaving there. The Importance of improving our present schedule on the two trains in question is now receiving very serious consideration at the hands of our people. There are possibly two ways to accomplish it, one to reduce the number of stops the trains are now making or reduce the size of the train. The last, of course, does not appeal to us from a transportation standpoint. We feel that while we are operating this train we should provide a sufficient number of sleepers and through coaches to accommodate this long distance travel offered.

At the time the through service was first inaugurated by the Atlantic Coast Line from between the East and Florida Coast we were practically the only line operating a through fast line or through sleeping car,—The Atlantic Coast Line was many miles shorter than any other Rail route to that territory. At present the Sea Board Air Line is a shorter route between said sections and the Southern Railway only a few miles longer. Within the last three years, we have placed dining cars on these trains, the main purpose being to save a few minutes heretofore lost at meal stations; and we are operating those dining cars at an actual loss. It may be shown from the records that not two months out of twelve do they show net and the other months running as much as Fifteen Hundred to Two Thousand Dollars per month behind.

163 Competition has became so keen, the schedule of through trains shortened, the demand for extraordinary fast service between distant points so pronounced, that a transportation line desiring to enjoy any long distance competitive travel or have any standing whatever as a through passenger route must operate trains with schedules and through car service and arrange time you may say exclusively for through passengers, thereby necessarily, restricting any local movement. To show how far that feeling has gone with the travelling public, because the transportation people are trying to meet the demand of the travelling public, I would mention the schedules between New York and Chicago, for they have had a twenty hour schedule train keyed up to the highest notch, it would be supposed, yet they have undertaken to reduce it two hours. That seems a very small margin of time but it is felt to the extent if one line makes a change the other lines must necessarily follow or give up a large percentage of their New York and Chicago travel. Now these trains are not run because the transportation people want to run them but simply because the public demands it. The day is here for quick and fast movement. Cities heretofore considered far apart have been, by these fast trains, brought very closely together. If we should undertake to provide local service, such as is contemplated by the complaint with train- No. 32 and *Mo.* 33 we would absolutely destroy their value as through trains, and without that travel these trains would, of course, be operated at a loss. Our local schedules at this time are all that is necessary to take care of

the local travel. It would simply mean discontinuing No. 32 and No. 35. Their usefulness would be gone. When we selected a name, and I refer to the line between Washington and Port Tampa, at that time the Plant System and the Atlantic
164 Coast Line Railroad System and R. F. P. & Washington Souther-, we endeavored to fix on a name that would not only describe the service but also the territory to which we expected to give preferential attention with these trains and therefore the name selected was: The Florida & West India Limited, Limited as to speed, operated primarily for the purpose of serving Florida and Cuba. The importance of a satisfactory through fare of travel between Cuba and this country, and the markets of this country,—and at present a Cuban knows only the eastern market—is very great. With the old arrangement, where *we* has to leave Havana, by ship and land at New York and possibly spend a few weeks at Saratoga, he was not informed and had possibly no opportunity of informing himself as to the possibilities of this coun*rty*, certainly not of the southern county. We have not only undertaken to overcome that by these fast trains offering him practically a land route from Havana to New York and the east but we have, at considerable expense, established an Agency in Havana, Cuba. We have one of the best men we could secure representing us on the Island. We hope not only to increase our passenger movement with these through trains but we hope to assist in developing the joint commercial interests which must necessarily, for the salvation of that Island, assist between the Island and this country. Up to a few years ago Cuba bought practically all the cotton goods they used from England. The small percentage furnished by this country was hardly noticed. We hope to change these conditions. Our efforts are in the direction of commercial education as far as that section of the country is concerned. We have got to have something coming in to assist us in this work. Destroy the trains we have mentioned as through trains and our Cuban efforts are necessarily handicapped *is* not absolutely shut off.
165 In the present day when fast trains are no longer exception-, their value is determined not only by the Dollar that the trains may bring in from passenger standpoint but also by the increased mail facilities, and their value as an advertisement of the country through which those trains are operated. I mentioned a few moments ago competition. Thirty-two and Thirty-five are all the year around trains. During two or three months of the heavy tourist travel we operate another fast train, south bound and north bound. This train does not even carry the mail but the travel accommodation thereon demands fast first class equipment and the fastest possible schedule. From a traffic standpoint,—from the standpoint of net earnings to the company the value of No. 32 and No. 35 would be destroyed by converting them into local trains as contemplated by the complaint. I would strongly recommend their being discontinued. There is no place for them in that field. They are through trains, pure and simple. It is from the through long distance traffic handled on those trains that we get our money.

Now I am naturally as a traffic man, anxious to do anything I can do for the development of our local territory. That itself in the main important branch of the service and certainly represents 90% of the transportation problem. If we could create at all of our local points Cities that in some way grow up at competing points it would naturally be to our advantage to do so. If I could send one more farmer to Latta or to the Latta Branch or to Dillon, or to Fayetteville, it means more revenue to us in every way. They are consumers and in a number of cases producers. If we consider our service from the local territory along our line, we will say between Florence and the North, we have a train North and South bound that enables those people to reach the eastern Cities with one night out, leaving Latta about noon, arriving at New York the fol-
166 lowing morning early, Boston in the afternoon, returning, leave New York at 9:25 P. M., and arriving at home the following afternoon. The journey is one night out from Washington to New York on that fast train, the journey is one night out from Jacksonville to Savannah on this fast train and the journey is one night out on these trains in that territory we are anxious to serve and give everything we possibly can. But from our standpoint, if the travel from that section requires a service such as we are giving, or could give if we started these trains from those points on No. 32 and No. 35, then it becomes a question of not using No. 32 and No. 35 but establishing new trains. Now why is that so? Because using No. 32 and No. 35 for that purpose you absolutely destroy them,—destroy their value as such.

There is another thing about your through train and tourist travel that may have some bearing on this case and that is not only — importance of running a very fast schedule but the importance of limiting the stops. Now we all know you can get on a local train and some of our local trains run at a high rate of speed between two given points,—at a higher rate of speed possibly than our through trains brought about by the fact that they have to make these stops and their running time has been pushed up to the maximum, but the minute you undertake to make a long journey as between New York and Jacksonville or Tampa and get on a train of that kind, I don't care what speed she makes when she is running you say this is no through train, this is a local train. You have heard it on the trains time and time again. And when you stop your fast through trains for any purpose whatever you are criticised by the people who patronize such trains. They want to go on and go.

Q. In describing the through train, as an official of the Coast Line, are you sensible of any desire on the part of the
167 Coast Line to sacrifice local conditions?

Ans. Not for a minute. In fact the local conditions receive more attention at the hand of our people than the competitives condition.

Q. Do you not run local freight trains and through freight trains?

Ans. Yes sir.

Q. To serve different purposes?

Ans. Yes sir.

Q. Is not there the same parallel between through freight trains and local freight trains and No. 32 and No. 35 and local passenger trains serving local condition?

Ans. Yes sir. Take our through vegetable trains leaving Charleston at about 10.00 o'clock at night running during the season, that is, during the time the truck is moving in quantities,—in three to five sections out of Charleston alone. Those trains are not stopped for anything except wood, water and Railroad crossings and also transfer at certain junctional points at which we undertake to deliver to those trains some business coming in from branch line and business picked up at intermediate points. We look upon those trains and really they receive as much attention,—those through freight trains, as our through passenger trains; because they are put on with express purpose of taking care of a certain business and run,—you might say,—for that purpose alone. We have south bound and through trains, we have companion trains 212 and 210, they being south bound trains. They are fast through freight serving this far distance territory, bringing the Georgia man the upper Carolina man and, if you please, the lower Carolina man, as near the markets as enjoyed by his competitor or fellow merchant in North Carolina or Virginia,—those points being taken care of by another service entirely nearly as good as this service and many times much better than the service we can offer one who is at a far distant point and is served by through trains.

168 E. BORDEN, a witness for the Defendant being duly sworn testified:—

Direct examination:

Q. Mr. Borden, please state the character of your business?

Ans. General Superintendent of Transportation of the Atlantic Coast Line Railroad Company.

Q. Are you acquainted with trains No. 32 and No. 35?

Ans. Yes sir.

Q. Are they fast or slow trains?

Ans. Fast.

Q. Are they necessarily fast for their purposes?

Ans. Yes.

Q. Have you or not any difficulty in maintaining the schedules of those trains?

Ans. At times, yes sir, very great difficulty, and make the schedule under most favorable circumstances.

Q. If that train was stopped at Latta, S. C., and similar points during its entire run in your judgment, what would be the time in the increase of schedule between New York and Tampa?

Ans. The schedule time of train No. 39, a local passenger train, running between New York and Jacksonville and beyond is thirty-six hours and ten minutes. Train No. 35, which is a through train, stopping only at certain points, is twenty-nine hours and fifteen minutes.

Q. As compared with train No. 39 coming South, what would be the effect of stopping No. 35 at such points?

Ans. We would practically make No. 35 a local train and necessarily would consume a great deal more time to make the run.

Q. Could the through passenger business of the Atlantic Coast Line Railroad Company be effectively taken care of by stopping No. 32 and No. 35 at such points as Latta?

Ans. No sir.

Q. Can the local travel at points like Latta be effectively taken care under present conditions?

Objected to as an opinion.

Ans. I think so, that is based on what has been for the last ten years.

169 Q. Can you tell us why these trains stop at Emporia?

Ans. The prime object is to take water.

Q. Is there any difference between the stops of No. 32 and No. 35 at Emporia?

Ans. Yes sir, No. 32 stops for water and does not stop at the station.

Q. How about No. 35?

Ans. Thirty-five in stopping for water, places the cars right opposite the depot and as a matter of accommodation, I think they make it a flag station.

Q. One train in stopping for water is not located near the station and the other train stopping for water happens to be located at the station?

Ans. That is right.

Q. Do you know why the train stops at Dillon, S. C.,—the through train No. 32 and No. 35?

Ans. They stop at Dillon on account of the urgent request of that community and my recollection is that after repeated refusal and not withstanding it was very much against our desire and wishes but in view of the fact that they promised that they would stand between us and any further requests on the part of other communities it was finally agreed to.

Q. When you say "they," who do you speak of?

Ans. The Railroad Company. Mr. Garris. I am not positive whether he was Chairman or not.

Q. The question was asked Mr. Craig concerning a stop made by these trains in Florida, will you take that up and explain it?

Ans. Sout- of Jacksonville?

Q. Yes or south of Savannah?

Ans. Suppose you take South of Charleston. Up to July, 1902, south of Charleston, was the Plant System and when the Atlantic Coast Line acquired control of the Plant System they found certain conditions and customs and they have not been changed. Now for instance the stop at Ridgeland, we would be very glad to get

170 rid of that stop but it has been a long custom for trains to stop there and we cannot very well do it. In the same way train No. 35 did local work between Savannah and Waycross, espe-

cially so during the summer months after the Jessup short line was built. Up to the present time train No. 35 continued to do the local work or make local stops between Savannah and Jessup. Train No. 32 however, does not and only within the last few months we found it necessary to refuse or to decline to stop train No. 32 on signal at Ludowici.

Q. Is there any difference between the schedule of No. 35 in Florida in the present folder, say for July, and the winter schedule?

Ans. Until the present summer it has been customary to discontinue train No. 39 between Jacksonville and Port Tampa and require No. 35 to do the local work.

Q. How many stops did No. 35 make on your winter schedule in Florida, say south of Jacksonville?

Ans. Train No. 35 this past January between Jacksonville and Tampa made fourteen stops.

Q. What is the distance?

Ans. Two hundred and forty and 6/10 miles, of that there are four flag stops.

Q. How many are necessary for water and inspection and change of crews?

Ans. There is only one for inspection of cars and change of engine and crew and that is at Sanford, at which twenty (20) minutes is allowed for supper.

Q. They do not run a dining car south of Jacksonville?

Ans. Not a regular dining car. The old Plant System did have a couple of dining cars but they have been discontinued.

Q. How many of these stops are necessary for crossing and water?

Ans. I could not answer about the water and I don't know that I can answer about the crossing; though there are several down there. There are four draw bridges between Jacksonville and Sanford and one between Sanford and Port Tampa and certainly two
171 Railroad crossings.

Q. Do No. 32 and No. 35 make the Augustq connection?

Ans. Thirty-five does not, because we are unable to meet the figures of the Georgia Railroad. It would require a train to run so fast we found it was impossible to do it and while we used to reach Augusta at 8:15 and made connection with the Georgia road we now make it 9:15 and on account of our being almost invariably late the Georgia Railroad constantly complaining, we found it necessary to slow down the train and give up the conn-ction at Augusta.

Q. You could not run No. 35 fast enough to make the through connection to Atlanta?

Ans. Atlanta, Macon and Augusta, No. 32 makes the connection.

Q. Do No. 32 and No. 35 run altogether over the Coast Line?

Ans. No sir, they run over the R. F. & P. Washington, Southern and Pennsylvania.

Q. In arranging a schedule for No. 32 and No. 35 both as to time of leaving and speed of train are the wishes of the other road over which these trains run, necessarily involved?

Ans. The schedules of these trains are fixed at what are known as the General Time Convention at Washington, at which time and

place representatives of the Pennsylvania, and Washington, Southern, and Atlantic Coast Line, the Sea Board Air Line, the Southern Railway, the Chesapeake & Ohio, the Norfolk & Western, and Florida East Coast are represented.

Q. Could the Coast Line arrange a schedule for No. 32 and No. 35 regardless of the wishes of the Pennsylvania Railroad?

Ans. I will say this; I have for two years been trying to slow No. 32 down and requested at these conventions the Pennsylvania Railroad to receive the train from us thirty or more minutes late and their reply has invariably been, that the leaving time at Washington at 8:10 is the best that they can do for us under the present conditions. The time for No. 32 is fixed at Jacksonville by the ar-
172 riving time of the Florida East Coast and at Washington by the leaving time of the Pennsylvania Railroad.

Q. Do the various roads compete for the mail contract?

Ans. I don't know that I can answer that question. I couldn't do it from my own knowledge, it would be only a supposition.

Q. Do you know enough about it to say if the speed of the train is a desirable element on the part of the government in giving a railroad a mail contract?

Ans. I can only answer that is this way, that the Southern Railway now have a contract to carry the mail from Washington to New Orleans and the last information I had it carried nothing but mail cars. It has the right of tract over everything,—over all trains in both directions. That is my information.

Q. If there is anything which you think is pertinent please state it?

Ans. We take No. 35 train for instance. Her speed over the Atlantic Coast Line is worked out as 35:74. That is, the average speed of the train is 35:74 hundred or practically thirty-six (36) miles an hour; while the speed of No. 32 is worked out as 38:18. That train is faster as I have explained by the arbitrary time at Jacksonville and Washington. It has been our endeavor to slow it down because we have found that it is very difficult to maintain this schedule; especially so from November until May, when the trains in both directions are very much heavier than at any other time, because they haul more cars.

Q. How many sleeping cars are dropped off No. 35 coming South and at what points before reaching Tampa?

Ans. One is dropped off at South Rocky Mount for Wilmington, one at Florence for Augusta; one at Charleston for Charleston proper; one at Jacksonville, as well as a dining car; and one sleeper continues through to Tampa.

173 Q. Isn't it therefore a fact that *that* after No. 35 gets into Florida it becomes a lighter train and could consistent with speed make more stops than at an earlier part of its journey?

Ans. Yes sir.

Cross examination by Assistant Attorney General, W. H. TOWNSEND:

Q. What is the difference in schedule South of Jacksonville, and North of Jacksonville?

Ans. I have not got that work up but I should say the schedule south of Jacksonville would be about 27 or 28 miles an hour.

Q. North of Jacksonville it is what?

Ans. 38:18 for No. 32.

Q. It is much slower in Florida?

Ans. Yes, sir, the trains are lighter and it does more local work. Jacksonville is the objective point.

Re-direct examination:

Q. Does No. 39 and No. 40 between stations, of course allowing for starting and stopping, run as fast as No. 32 and No. 35 between stations?

Ans. We have been up before the Railroad Commission at Raleigh, N. C. The Railroad Commission got on the train at Raleigh and road on that train. They wanted us to put on an extra train, I believe they run as fast as they can turn a wheel.

Q. Why is No. 39 and No. 40 slower trains than No. 32 and No. 35?

Ans. Because they have to do the local work and make the stops.

A. W. ANDERSON, a witness for Defendant, testifies:

Direct examination:

Q. What is your position with the Atlantic Coast Line?

Ans. General Superintendent, First Division.

Q. How much of the length of the run of No. 32 and No. 35 does your division cover?

Ans. Between 500 and 600 miles.

174 Q. Mr. Anderson, I asked other witnesses as to the importance of maintaining the speed of these trains and I will not ask you in regard to that. I believe I asked Mr. Borden about the importance of this feature of these trains as to the Mail contract and he referred me to some other department and now I ask you about the Mail contract?

Ans. We handle, of course, United States mail and we handle the Cuban Mail. The United States Government, as you all know, is very jealous of its mail service and they keep after us about our failures to provide good service and which means our schedule. If we do not provide it, they call it to our attention.

Q. To change it to other routes would cause financial loss to your Company?

Ans. Very serious; you can imagine what it would mean by the loss of the heavy mails handled by No. 32 and No. 35 for over a thousand miles at so much per pound, and mile.

Q. How long have you been Superintendent of the First Division of the Atlantic Coast Line?

Ans. About five months.

Q. During that time have you had occasion to go over the Latta Branch Railroad?

Ans. Yes sir.

Q. There was something in the testimony as to the character of the passenger car running between Latta and Clio, I will ask you from your experience as a Railroad man, if this car affords a reasonable passenger accom-odation as compared with similar branch lines?

Objected to as a matter of opinion.

Ans. I do think that the character of the equipment on there is amply good for the character and extent of the business on a branch line twenty miles in length. I heard the objection raised to the coach and its equipment and made a personal examination; and found the car in very good condition; not such as we would handle on our main line, for the reason that one man rides possibly all day on a car and the comfort of the car for that man is a very different
175 proposition from the comfort needed on a line of twenty miles length which meas*n* it may be an hour's run. I was agreeably surprised at the condition and general character of the car; and if we are not to use our passenger cars that are old in service of that kind, then we have got no other way to make use of them and we have to destroy property that we consider from Twenty-five Hundred to Thirty-five Hundred Dollars each. The water cooler was in keeping with what I would have provided just such service and the complaint as to what was drunk out of is a difference between a glass and a cup and the reason a cup is used is because we have found on these little branch runs passengers have an interest in the conductor and the train crew and they break the glasses and take them off while tin cups they don't seem to prize so highly and they last better; and we do not suffer from complaint that we don't have anything for a man to drink out of. That is a princi*ple* reason for our using cups and not glasses.

Q. What would you say as to Latta Branch paying as passenger run,—how many miles is it?

Ans. Twenty miles.

Q. The accom-odation furnished the people, what would you say as to its being a paying enterprise as to its passenger traffic, taking into consideration the cost of operating the passenger traffic?

Ans. As to general branch lines themselves their proportion of the business actually accruing to the mil-age on those branch lines are nearly unprofitable, and I have little doubt but that the Latta Branch run independently with the service given that we give it, would be at an actual loss.

Cross examination by Asst. Attorney General TOWNSEND:

Q. The value of Branch lines is not to be measured solely by the proportion of the earnings on that line alone but includes its value as a feeder to the general road?

Ans. Necessarily, that is the value they have but we can-
176 not figure that.

Redirect examination:

Q. In your judgment, would it be practicable for the Coast Line to stop its through train No. 32 and No. 35 at similar points and if not, why not?

Ans. I would regard such a necessity a serious calamity to our road for the reason that it would divert our through passenger business for Florida largely on which we get a thousand miles haul to other lines. And again it would cause us the loss of mail business for Cuban and Florida points and for the further reason that if we were required to make these stops it is natural to be supposed that the same action would be taken with reference to the Sea Board and the Southern Railroad, who are our strong competitors for this business and the result would be the business would not come South at all but would go West or some where else. People in this day, and especially tourist travel are not going to ride on slow trains,—when I say slow trains I mean trains that stop everywhere. Now trains No. 32 and No. 35 are no faster when they are running than trains No. 39 and No. 40. They both run just as fast as they can turn a wheel and the only difference between the speed of the one and the speed of the other is one stops frequently and the other stops just as seldom as we can arrange for it to stop. I would add that within the last twelve months, to my knowledge, because, while not connected with the Coast Line here, I have been indirectly connected with the interests and in my knowledge they have had to break the connection at Augusta, Ga., on account of their inability to meet the requirements on its line of road,—a connection to the vast territory west and south-west of Augusta.

Q. In the thinly populated country as we find in the South as compared with the thickly populated country, to-wit the North. Isn't it very desirable for the southern road to encourage
177 tourist travel *travel* as a source of passenger revenue, and is it not more important than for the Northern roads to do the same thing because of their immense passenger traffic?

Ans. I think so sir. And I would also say further, that I regard the fast trains, the elegant parlor cars, sleepers, dining cars that are being out on these southern trains as having done as much not only to develop the south as the tourest section of the country but to develop the material growth of the south as any other factor I know of. So, without fear of contradiction to make these trains slow trains, as would necessarily result from the action proposed here, would be a serious blow in the direction of retarding the growth and development of this section of the country; for the very good reason, that the impression that travellers get from the service on the train is greater than they get from any other thing probably they see and come in contact with on that route to and from these resorts.

Q. Would the expense involve- in the equipment of these through trains be justified to satisfy local condition alone? That is to say, would it pay the company to keep these trains if they were local trains?

Ans. It would not. And you don't want any better evidence of the accuracy of my statement than to examine into the character of

the passenger on these sleepers, dining cars and chair cars, etc. They are nearly all through passengers; local travel doesn't use sleepers and chair cars and dining cars as a rule, there are exceptions, of course.

Q. What have you to stay as to stops of No. 32 and No. 35 in Florida?

Ans. Jacksonville, Fla., is the great distributing point of the passenger travel in that section of the country. Fast trains composed of magnificent cars of all kinds run from the North and West through to Jacksonville, Fla. At that point one of our strongest competitors stop- and we handle his business south of that and
178 therefore one of the greatest — for running fast up to Jacksonville is done away with. There is another very important feature and that is that the business is Florida business through to Florida and from Jacksonville South they are scattered in every little town and hamlet in the country and the necessity for more frequent stops is, of course, greater. There is another feature, at Jacksonville we handle mail to and from the East Coast Railroad which takes in the Nassau mail. On our own line, we handle the Cuban mail from Port Tampa. Now between Port Tampa and Jacksonville we have got all the time we need on at least one of the two trains and for the reason that we leave on the arrival of the mail from Cuba and even if we run very rapidly and without stops, we could get to Jacksonville before the East Coast arrived there and before the mail coming on the East Coast and therefore we have no reason why we should avoid these stops when we have plenty of time. I would like to say just here, in making up our schedule, in making our stops in deciding all the conditions that are liable to arrive in connection with any of our passenger trains we try to reason out the whole subject and we try to decide on what is the greatest good to the greatest number of people that will be or can be served by such or such service. In arriving at this conclusion, we do things that one point may actually suffer from but in doing it, it is not with any desire certainly to cause it to suffer but with the greatest desire as stated before to serve the greatest number. While one point might suffer, we think the good done other points will be so much greater that it is the proper thing to do. I would like also to say that my opinion is that if No 32 and No. 35 are made local trains as are No. 29 and 40 and the town of Latta, as well as every town of its size on the line of railroad, would soon feel the effect of such ser-
179 vice, would soon begin to complain that we have only local trains instead of through fast trains, some of them through fast trains.

Q. Was the Short Cut built for the accom-odation of through or local trains?

Ans. The Short Cut was clearly built to shorten the time between the North and South and principally shorten it for passenger trains; for at that time there was not very much truck business moving North and South. That is the development of the last fifteen years. At that time that road was built in order to meet the competition that was growing up around the property and trying to shorten its passenger line between the North and South.

180 STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

The term of office of C. W. Garris, one of the plaintiffs, having expired, and J. H. Earle having been elected a Railroad Commissioner, it is on motion of the Attorney General ordered that this case be continued and prosecuted in the name of J. H. Wharton, B. L. Caughman and J. H. Earle as R. R. Commissioners, Plaintiffs.

Y. J. POPE, *C. J.*

15 Jany., 1906.

181 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

J. H. WHARTON ET AL., Plaintiffs,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Statement of Facts.

This is an application to the Supreme Court, in the exercise of its original jurisdiction, for a writ of mandamus, requiring the respondent to stop two of its fast mail trains when flagged, in order to provide adequate facilities to the citizens of Latta and surrounding country, in making certain railroad connections.

The petition alleges:

"That on June 7th, 1804, certain citizens residing at Latta and along the line of the Latta Branch Railroad, filed a petition with the plaintiffs as Railroad Commissioners alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers traveling on said railroad, and asking that the said Railroad Company be compelled to stop its passenger trains, Numbers 32 and 35, at its station in the town of Latta when flagged, for the purpose of receiving and delivering passengers at said station.

That thereafter, on July 29th, 1904, the said Railroad Commissioners after investigating the facts stated in said petition, and after notice and hearing the above named defendant in reference to the facts of said petition, found as a matter of fact, that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta by the Atlantic
182 Coast Line Company at its station in Latta, and said Railroad Commissioners thereupon made an order that the said passenger trains, Numbers 32 and 35, operated by the Atlantic Coast Line Railroad Company, should stop when flagged, at the said Latta station, on and after August 1st, 1904."

The respondent contends that sufficient passenger accommodations are now furnished the citizens of Latta, and those residing along the Latta Branch Railroad and relies upon the defense "that said order of the Railroad Commission of South Carolina is unreasonable, unnecessary, a direct burden upon interstate commerce, and therefore a violation of and in conflict with Section 8, of Article 1 of the Constitution of the United States, which provides that Congress shall have the power to regulate commerce with foreign nations and among the several States, and further, that said order is a direct and unnecessary interference with the speedy carriage of mails of the United States."

The testimony was taken by a special reference under order of the Court.

The decision of the Commissioners is set forth in the following notice served upon the general superintendent of the railroad company:

"DEAR SIR: We beg to hand you herewith the finding and order of this Board in the matter as set forth, as follows:

On petition of the town Authorities of the town- of Latta and Clio and citizens along the Latta Branch Railroad for the stopping of Trains Nos. 32 and 35 on flag, for receiving and delivering passengers at said station. After personal inspection of the situation at Latta, and the demand of said citizens for those accommodations, it

it appears to this Board that sufficient accommodation was
183 not furnished to those citizens to fulfill the requirements of the Statutes of this State. The evidence was sufficient to warrant this Board in demanding that better accommodation should be furnished, and that it was not unreasonable to ask the said Company to stop Trains Nos. 32 and 35 on flag.

Therefore, it is hereby ordered that said trains shall stop on flag, at said Latta station on and after August 1st."

The attorney who filed an argument in behalf of the petitioners, thus states the reasons why the accommodations are considered insufficient:

"Any inconvenience arising to passengers at Latta necessarily arises to passengers from Clio and the territory adjacent to the railroad between the two places, a distance of twenty miles, passengers from Clio and the stations between the two places having to pass through the junction point, Latta. Hence, there are involved not only passengers from Latta, but from a large territory, which as it appears from uncontradicted testimony, is a progressive, prosperous and thickly settled section.

A passenger at Latta may take a train at 8 A. M. and go to Dillon on the Latta Branch Train. This train returns immediately and passing Latta, goes to Pee Dee Junction, where connection may be had for Charleston and points on the Cheraw and Darlington road and Wilmington and immediate points. The Latta Branch train returns from Pee Dee forthwith, and, after a wait of two or three hours at Latta, goes to Clio. The morning express a local train, arrives at 10.45 A. M. for points north. During the day at some indefinite time local freight trains pass, one going north and the

other south, making connection with all points south of Latta, including Columbia. This is the only Columbia connection. The Latta Branch train returns from Clio and goes down to Pee
184 Dee just behind the local passenger. It returns from Pee Dee and goes up to Clio, where it rests for the night. Thus there arrive and depart from Latta two passenger trains, the Latta Branch train five times and two freights, aggregating nine trains per week day. On Sunday there are only two trains.

With all these trains, there is only one connection per day north to Dillon and points beyond. The stopping of train 32 would remedy this. There is only one connection to Columbia, and passengers for points beyond Columbia have to remain over night and pay a hotel bill, either in Florence, Sumter or Columbia. There is no connection for Orangeburg and points betwee- Sumter and Augusta, absolutely none, without having to pay a hotel bill and being put to inconvenience and delay. The stopping of train 35 would correct all this."

The following testimony of the general superintendent of the respondent gives a clear outline of the grounds upon which it contends that the facilities are adequate:

"Q. In describing these connections that are afforded to Clio, S. C., are not all the connections you have described also afforded Latta, S. C.? A. Yes, sir.

"Q. Do you know the last census population of Latta S. C.? A. Yes, sir; I have it taken from the United States Census, a copy of which I have. The population, according to the census of 1900, was 453.

"Q. What was the population of Clio? A. Five hundred and eight.

"Q. What is the population of intermediate points between Clio and Latta? A. The only point shown is Dunbar, 115 people; the United States Census report showing that the other points are less than fifty population and are, therefore, not given.

Q. What is the census population of Kingstree, S. C.?
185 A. Seven hundred and sixty people.

Q. How many passenger trains a day in all directions, afford to the people of Latta, S. C., an opportunity of going off by boarding a train? A. Eleven. The following trains arrive at Latta from Clio: At 7.00 a. m.; 6.05 a. m. from all points south, 10.30 a. m.; from Dillon 7.50 a. m. from Pee Dee and points beyond, 9.35 a. m. and 9.05 p. m. The following trains depart from Latta: For Clio, 11.15 a. m. and 9.18 p. m.; 7.01 p. m. for Wilmington and points south and west ; 8:30 a. m., Pee Dee and points beyond, and 7.40 p. m. for Pee Dee and points beyond. In addition to which there are two local freight trains provided with passenger service leaving Latta at 9.00 a. m. for Fayetteville and intermediate points, and at 7.01 p. m. for Florence and intermediate points. * * *

Q. Is it not a fact, Mr. Craig, that the only one connection that is not made either in the morning or afternoon by the trains that you have described, is the train which leaves Florence at 8.00 a. m. for

Columbia, S. C.? A. That train only runs to Sumter but it affords connection at Sumter.

Q. Is or not that the only train that the two trains that you have described do not make connection with? A. Yes, sir."

It also relies upon the fact that trains No. 32 and 35 already stop at Dillon which is only six miles from Latta.

Opinion by EUGENE B. GARY, *A. J.*:

On the former hearing before this Court, the respondent interposed a demurrer to the petition which was overuled.

One of the grounds of demurrer was: "In that the order of the Railroad Commission is not the result of a judicially determined fact, and the defendant not having had its day in Court on
186 the merits of said order, the enforcement of the order of the Railroad Commission, deprives the defendant of its property without due process &c."

The Court in disposing of this ground of demurrer said: "The facts were determined by a tribunal well recognized and adopted throughout the land. The defendant was notified, appeared and contested the facts upon the merits."

As the facts were judicially determined by a tribunal, empowered by statute to make such adjudication, they are not subject to review by this Court, in the absence of allegations charging fraud or other grounds, for setting aside the adjudication.

Therefore, the question to be determined is, whether the order of the Commissioners, requiring the railroad company to stop at Latta, (if flagged,) its two fast mail trains engaged in carrying interstate passengers, was a burden upon interstate commerce, when the accommodations are otherwise inadequate.

The mere fact that they are fast mail trains engaged in carrying interstate passengers, does not exempt them from regulation under the statute of the State.

In the case of Lake Shore Co. *v.* Ohio 173 U. S. 285 the Court had under consideration a statute of Ohio providing that "each company shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city, or village, containing over three thousand inhabitants for a time sufficient to receive and let off passengers."

At the time when it was contended that the statute was violated, the railroad company caused only one of its trains to stop as required by the statute, although it was then operating three or more
187 trains, both ways, over its road; all of which, except the one that stopped at the station, were fast mail trains transporting interstate passengers.

On the assumption that the statute was not unreasonble, the Court held that the statute was constitutional, and used the following language:

"The power of the state, by appropriate legislation, to provide for the public convenience, stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either

kind is inconsistent with any power granted to the general government is to be determined by the same rules. * * * The statute does not stand in the way of the railroad company running as many trains as it may choose between Chicago and Buffalo, without stopping at intermediate points, or only at very large cities on the route, if, in the contingency named in the statute, the required number of trains stop at each place containing 3000 inhabitants long enough to receive and let off passengers. It seems from the evidence that the average time required to stop a train and receive and let off passengers is only three minutes. Certainly the state of Ohio did not endow the plaintiff in error with the rights of a corporation for the purpose simply of subserving the convenience of passengers traveling through the State between points outside of its territory. It was for the state to take into consideration all the circumstances affecting passengers travel within its limits, and, as far as practicable, make such regulations as were just to all who might pass over the road in question. It was entitled of course, to provide for the convenience of persons desiring to travel from one point to another in the state on domestic trains. But it was not bound to ignore the
convenience of those who desired to travel from places in the
188 state to places beyond its limits, or the convenience of those
outside of the state who wished to come into it. Its statute is in aid of interstate commerce of that character. It was not compelled to look only to the convenience of those who desired to pass through the state without stopping. Any other view of the relations between the state and the corporation created by it would mean that the directors of the corporation, could manage its affairs solely with reference to the interests of the stockholders, and without taking into consideration the interests of the general public. It would mean, not only that such directors were the exclusive judges of the manner in which the corporation should discharge the duties imposed upon it in the interest of the public, but that the corporation could so regulate the running of its interstate trains as to build up cities and towns at the ends of its line or at favored points, and by that means destroy or retard the growth and prosperity of those at intervening points. It would mean also that, beyond the power of the state to prevent it, the defendant railway company could run all its trains through the state without stopping at any city within its limits, however numerous its population, and could prevent the people along its road within the state who desired to go beyond its limits from using its interstate trains at all, or only at such points as the company chose to designate. A principle that in its application admits of such results cannot be sanctioned."

The statute of Illinois is as follows: "Every railroad corporation shall cause its passenger trains to stop upon its (their) arrival at each station advertised by such corporation as a place of receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety; Provided, all regular passenger trains shall stop a sufficient length
of time at the railroad stations of county seats, to receive and
189 let off passengers with safety."

This statute was held to be unconstitutional in the case of

Cleveland &c. *v.* Illinois &c., 177 U. S. 514. The Court used the following language: "The question broadly presented in this case is this: Whether a state statute is valid which requires every passenger train, regardless of the number of such trains passing each way daily, and of the character of the traffic carried by them, to stop at every county seat through which such trains may pass by day or night, and regardless also of the fact whether another train designated especially for local traffic may stop at the same station within a few minutes before or after the arrival of the train in question. * * *

While, as we held in the Lake Shore Case, railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, and who not only have granted to them their franchise but who may have contributed largely to the construction of the road, they are bound to do more than this, and may then provide special facilities for the accommodation of through traffic. * * *

With no disposition whatever to vary or qualify the cases above cited, neither the conclusions of the Court nor the tenor of the opinions as opposed to the principles we hold to in this case, that, after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic and legislative interference therewith is unreasonble and the infringement upon that provision of the Constitution which we have held requires that commerce between the states shall be free and unobstructed."

In commenting on the case of Cleveland &c. *v.* Illinois &c.
190 173 U. S. 285 the Court says: "This case is readily distinguishable from the one under consideration, in the fact that the statute of Ohio required only that three regular passenger trains should stop at every station containing 3,000 inhabitants, leaving the company at liberty to run as many through passenger trains exceeding three per day, as it chose, without restriction as to stoppage at particular stations. In other words, it left open the loophole which the statute of Illinois has effectually closed."

The Court recognized the principle that it is the duty of the railroad company, to provide, *primarily,* sufficient accommodations for those to whom it is directly tributary.

From this doctrine, it follows as a necessary corollary that it is only "after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic."

The facts judicially determined by the commissioners show that the accommodations are adequate, and that the citizens of Latta are entitled to relief.

In seeking to give relief the Commissioners have ordered trains No-. 32 and 35 to stop when flagged.

This Court has reached the conclusion that the writ of mandamus should be issued; but in order that the respondent may have the opportunity of discharging its primary duty in the premises, without stopping trains No-. 32 and 35 on flag, the writ will be so framed as to confer upon the railroad company the alternative right to provide facilities substantially the same as those which would be

afforded the citizens of Latta by stopping trains No-. 32 and 35 on flag.

It is the judgment of this Court that the writ of mandamus be issued in accordance with the conclusions herein announced.

191 [Endorsed:] The State of South Carolina, in the Supreme Court. W. H. Wharton *et al.*, Plaintiff-, *v.* A. C. L. Ry. Co., Defendant. Opinion by Eugene B. Gary, A. J. We concur, Y. J. Pope, C. J., Ira B. Jones, A. J., C. A. Woods, A. J. (Report.) Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 26 Feb. 1906. U. R. Brooks, Clerk.

192 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, Railroad Commissioners, Petitioners-Plaintiffs,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant-Respondent.

Petition for Rehearing.

To the Honorable Justices of the Supreme Court of the State of South Carolina:

Your petitioner, Atlantic Coast Line Railroad Company, through its counsel, Willcox & Willcox, in petitioning for a re-hearing in the above stated case, respectfully suggests that the Court has in its decision overlooked material matters of law and fact, on the following grounds:

1. The conclusion of the Court is that

"This court has reached the conclusion that the writ of mandamus should be issued; but in order that the respondent may have the opportunity of discharging its primary duty in the premises without stopping trains No-. 32 and 35 on flag, the writ will be so framed as to confer upon the railroad company the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains No-. 32 and 35 on flag."

In this conclusion the Court has decided two points: (*a*) That, beyond the power of that which is merely police regulation, state authority has the right to control, by its legislation and
193 judicial orders, interstate commerce trains; and (*b*) that the foundation for this right is, because, as a primary duty owed by the railroad company adequately to provide local accommodations, it has been ascertained that this primary duty has not been performed.

It, therefore, holds that but for the fact that the railroad company has not adequately supplied these local accommodations, state authority could not lay its hands upon that portion of the railroad service which is supposed to be controlled entirely by the constitution and laws of the United States, or that branch of it known as regulating interstate commerce.

The respondent, in this petition for a re-hearing, will endeavor to make plain two positions which it thinks are vital to the controversy.

The first position is, that if it is the primary duty of the railroad company to provide for local accommodations, and if it is the secondary duty of the railroad company to provide for interstate commerce conditions, it cannot be contended but that these two duties, denominated primary and secondary, are of eqaul importance in the one case to the local traveling public, and in the other case to the interstate traveling public; and that it is equally the duty of the railroad company to provide for both, even though one be termed primary and the other secondary. And we will attempt further to show that the primary duty of providing for the local traveling public is wholly within the domain of state authority, and that the secondary duty of providing for interstate commerce travel is wholly within interstate commerce authority; and in enforcing either the
194 primary or secondary duty, neither the state authority nor interstate commerce authority can invade the jurisdiction of the other. For the evident reason that in enforcing these respective and in dependent duties of the railroad company to the public, local and interstate commerce, it is not necessary for any practical purpose, that the two authorities, state and interstate commerce, should sacrifice the accommodations with which these respective duties are fulfilled, because they exist, or can and should exist, independently; and jurisdiction, if it does not otherwise exist, cannot be given, either to state or to interstate commerce authority, so as to control and impede the other simply because that which it has the authority to enforce is not adequately supplied.

As a matter of illustration, we do not question the power of the railroad commission, through its orders, the state court controlling these orders upon their merits, to enforce adequate local accommodations at Latta; but inasmuch as these adequate accommodations can be required without invading the domain of interstate commerce, it is the duty of the state authority to require these adequate accommodations without destroying accommodations which are afforded interstate commerce travel, the regulation of which is exclusively within the domain of the congressional authority; and the converse of the proposition is true, that if, under the interstate commerce law, congressional authority should require the interstate commerce road to furnish proper equipment for interstate commerce travel, it should do this without trespassing upon the domain of state authority so as to sacrifice to any extent the equipment designed for local accommodations. The practical method by which the two duties, primary
195 and secondary,—that is, the class of trains with which these two duties are met are necessarily entirely different, as the jurisdiction of the court is different; and when either authority attempts to control by its orders the trains which are used to promote these respective duties, necessarily it results in a trespass upon the jurisdiction of the one authority by the other.

We will attempt to show on the second point that if a local statute or the order of a railroad commission can control the operation of interstate commerce trains, but can only do so after local accommodations have not been sufficiently met—in other words, if it be the

law that the primary duty and the secondary duty cannot exist side by side, but that the secondary duty, while it cannot be regulated by local legislation, can yet be entirely destroyed by local legislation, provided in the judgment of the local legislation the primary duty is not adequately performed; then we suggest that the fact of inadequate performance of the local duty must be determined by due form of law; and we will attempt to show that such a fact in this case has never been ascertained, much less ascertained by due form of law.

2. Contending always that if this Court should find that adequate local accommodations are not supplied, the limit of its power is to require local accommodations to be supplied, and to require it (which it can do) without interference with interstate commerce trains, we will first take up the question that if the law were otherwise it has never been judicially ascertained that local accommodations are not adequately supplied.

196 The railroad company, respondent, was served with a petition, or complaint, which alleged that the citizens residing at Latta and along the line of the Latta Branch Railroad had filed a petition with the plaintiffs as railroad commissioners, alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers traveling on said railroad and asking that the railroad company be compelled to stop its passenger trains Nos. 32 and 35 at Latta. This was an allegation of the petition necessary to be proven as a foundation for the proceeding in mandamus. It was necessary, in other words, to prove that they had filed a petition to stop trains Nos. 32 and 35 at Latta. It was also necessary to prove that they had originally filed a petition alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations at Latta. For the evident reason that this Court has ruled that it is necessary to show a violation of this primary duty before the secondary duty can be sacrificed.

We will contend later that the proceeding for the ascertainment of this fact, as to its method, was in violation of Article 1, Section 5, of the state constitution, and Article 14, Section 1, of the United States constitution; but for present purposes we will attempt to show to the Court that it is not a fact, as alleged in the complaint,—which must have been proven, even under the view taken by this Court as a foundation for the proceeding in mandamus,—that there was ever a petition antedating the complaint filed by either the people of Latta or the surrounding towns, setting forth that insufficient accommodations were supplied. We will further show that as alleged in the complaint the railroad commission, as a result of any hearing,

197 never found as a matter of fact that insufficient accommodations were furnished the citizens of Latta and along the Latta Branch Railroad. In spite of the fact that the railroad commission in its letter to the railroad company (denominated by the Court the order of the commission) said that better accommodations should be furnished, it does not appear by any testimony that the railroad commission passed upon such a question alleged in the complaint as material allegations, or that the railroad commission had a right to pass upon such questions, because such a charge as the failure to

provide for this primary duty was not alleged in the original petition. The railroad company was not called upon to defend this allegation of insufficient accommodation, and the railroad commission did not consider it, and had no right to consider it, because a question not before the commission for consideration. On this point, we do not see in the order of the railroad commission any statement that the question of better local accommodations was considered, or that the railroad commission attempted to say that its excuse for stopping interstate commerce trains was due to the fact that it had determined that local accommodations were not supplied; but the railroad commission, in its order, only stated in terms that the stopping of trains 32 and 35 would not be unreasonable, because it would result in better accommodations. It was merely an *obiter dicta* in effect stating that stopping trains 32 and 35 would give additional accommodations, but did not decide that those already given were not entirely adequate.

If, however, we misinterpret the language of this order, and the Court has construed it properly, we then submit that the language of the order is merely an allegation of the complaint, to be
198 proven as any other fact, and should not be self-proving, especially when petitioners have made it a part of their complaint, to be proven as a vital fact; because the railroad company would be wholly denied its defense if the mandate of a railroad commission should be accepted as proving conclusively, without question, that which it states to have found as a matter of fact. Especially is this the case when the merest inspection of the testimony will show to the Court that the railroad commission never considered and never had a right to consider the question of insufficient local accommodation as a violation on the part of the railroad company of its primary duty, which this Court has held to be the only excuse for an interference by state authority with the secondary duty.

Again, by its demurrer the railroad company, respondent, contended that while the railroad commission could regulate local accommodations generally, it could not do so when the question is made that its orders are unreasonable and amount to confiscation or impose upon the common carrier an unreasonable burden by compelling it to conform to these orders without a trial of the question of fact, to be determined by a court of competent jurisdiction. It made the question that if it conceived the order of the railroad commission to be unreasonable—which, at best, is nothing but mere legislation,—it could test this question by enjoining the enforcement of the order, and the court before which the injunction proceeding would be tried would cause testimony to be taken and ascertain the rights of the railroad company in passing upon the question of fact if the order was reasonable or unreasonable. Respondent knew that such a question could be raised and decided in an injunction
199 proceeding. It did not believe that such a question could be raised in a mandamus proceeding. It raised the question by the demurrer that a mandamus proceeding was never used except to enforce a plain ministerial duty, or to enforce the result of a judicially determined fact. The respondent understood the decision

of this Court on the demurrer to mean that its position was correct, to the extent that it had the right to have the question of fact—the reasonableness or unreasonableness of the order of the railroad commission—determined by some court, but that under the peculiar wording of the statute this court held that the mandamus proceeding would afford respondent just such a consideration of its rights on the question of fact as would be afforded it had the respondent taken the initiative and brought the injunction proceeding, or a writ of prohibition, as an original proposition.

In pursuance of this, this Court held that the railroad commission had a right to pass its orders—that is, to legislate, but that it should be left to a court, by mandamus proceeding, to enforce this order. We cannot conceive that the Court intended to say that by the mandamus proceeding this Court would, without consideration, accept the order of the railroad commission as reasonable, when it might not be reasonable, and automatically enforce it regardless of the right of the railroad company to have the question of right determined. We were led to believe this naturally, for the reason that this Court, in pursuance of its holding, appointed a referee to take the testimony and report it to the Court, for the only purpose that could have been thought of—that this court might, upon the report of that testimony, give the railroad company its day in court and try and determine the question of fact necessarily involved,
200 for a proper determination of the legal rights of both parties.

To what end could this testimony have been taken but for the purpose of trying the question of fact? Otherwise, why the order of Court appointing the referee and the expense and trouble of taking the testimony, all to no purpose, resulting in a work of supererogation, unless it was for the only conceivable purpose of a consideration of the testimony in determining the question of fact? Although this order of reference was made upon motion of the Attorney-General of the state, representing the petitioners, for the purpose outlined, evidently in consequence of his interpretation of the meaning of the decision of this Court upon the demurrer, that in this way the question of fact should be tried; and although the Attorney-General and other counsel for the petitioners did not take the position that the fiat of the railroad commission tied the hands of the Court; this Court has, we contend, overlooked these facts and held, without any such point being made, that it could not consider the facts of the case.

We contend that the whole theory of the litigation consistent with the former orders of this Court, which is the only view that would be consistent with the order appointing the referee to take the testimony—and by consent of counsel, because on motion of the Attorney-General that the referee should be appointed, so that the question of fact should be determined by this Court,—was the theory upon which the Attorney-General of the state brought the action and his method of giving the railroad company its day in court; and, in addition, the question of fact was elaborately argued by counsel for petitioners as a question submitted to the Court, without any
201 point being made that the question of fact could not be considered.

Again, this Court has held that the secondary duty cannot be controlled by state authority, provided the primary duty is adequately performed. Therefore, it follows, that when the respondent railroad company affirmatively defended on the ground that adequate local facilities were supplied, it would be necessary to determine the question of right for the Court to consider the question of fact upon which this affirmative defense is based.

Although the Court decides that it cannot consider the question of fact—that it cannot determine by considering the testimony whether or not adequate local facilities are supplied,—it says in its conclusion that interstate commerce trains cannot be interfered with unless these adequate local facilities are supplied, and violates, we submit, the result of this holding by stopping trains 32 and 35 at Latta when it has not determined whether or not these local facilities are adequately supplied. It is true that the Court holds that its writ will not require trains 32 and 35 to stop at Latta, provided respondent railroad company will supply adequate local facilities substantially the same as stopping trains 32 and 35 at Latta; but, we ask, Who is to determine what arrangement would afford the local traveling public substantially the same facilities? If this alternative writ had been the result of a judicial determination of the question as to what would or would not be substantially the same facilities, which was one of the affirmative defenses of the railroad company, this respondent railroad company might be in a position to know what would be a substantial compliance in its pro-
202 vision for local facilities; but until it has its day in court on this proposition, it must return to the railroad commission to find out from it, without a trial, that which it must provide as a result only of the wishes of the commission. We contend that this is the result and is the position that we are led into, for the reason that the Court has not considered the question of fact as to whether or not adequate facilities were not already sufficiently supplied,—assuming, for the purposes of argument, that the Court has a right to require interstate commenrce trains to stop upon the order of a railroad commission because local accommodations are not sufficiently supplied.

Before leaving this branch of the case, we beg to call the attention of the Court to the fact that while it has not considered the question of fact, and has refused to consider it as a matter of law, yet in its statement of facts constituting a part of the decision, before it could reach the conclusion that it has reached, it has undertaken to state the testimony as if it had some bearing on its conclusion.

We submit that we would like for the Court to consider the entire testimony, and not the extract of the testimony of the general passenger agent (denominated by the Court general superintendent) as giving a clear outline of the grounds upon which respondent contends that the facilities are adequate. We do not think that the extract quoted even approaches a full description of the character of the contention of respondent on this point; and we submit, further, that in its quotation of acts, as taken from the argument of

petitioners' counsel, the Court, upon inspection, will find that
203 the testimony so quoted is unintentionally inaccurate.

We make the point here that this Court could not come to a legal conclusion without considering, in some measure, the testimony; and the error, if any, which deprives the respondent of its right is the consideration by this Court of this testimony only partially, after it has, we submit, in error, concluded not to consider it at all.

As we have stated, we supposed that the failure of this Court to sustain the demurrer on the ground that to enforce the order of the railroad commission without giving the railroad company a trial on the question of fact deprived it of property without due process of law, was because the Court intended to give this trial in the mandamus proceedings by a consideration of the testimony which its special master was appointed to take. We supposed, therefore, that the Court appointed the referee to take the testimony in that upon the question of unreasonableness of the order the railroad company otherwise would have been deprived of its property without due process of law, in violation of Article 1, Section 5, of the constitution of the state, and Section 1, Article 14, of the constitution of the United States.

On this point this Court has declared itself in the case of State *v.* Earle, 66 S. C. 194. This was a case where the city of Columbia enacted an ordinance within its authority to legislate in matters of police regulation. Under a writ of prohibition initiated by the railroad company, and a demand by the railroad company that a referee be appointed to take testimony on the question of
204 right involved, as to the reasonableness or unreasonableness of the ordinance, which the railroad company declared deprived it of its property without due process of law,—this Court, after an elaborate review of the authorities, stated that these authorities demonstrated that the petitioner had the right to show by testimony that the ordinance was so unreasonable in its operation as really to be spoi*l*ation or confiscation of the railroad's property under the guise of legal forms, and that the ruling of the circuit judge, denying this right, was erroneous.

This view of the law has been again declared in the case of Thomasson *v.* Southern Ry., 72 S. C. manuscript decision, page 1.

We submit that there can be no greater weight given to the order of a railroad commission—which is, at best, mere legislation—than can be given to an ordinance of a city council purporting to effect police regulations. If the latter can be attacked as unconstitutional, because so unreasonable as to deprive a citizen of *its* rights without due process of law, logically the order of a railroad commission can likewise be attacked.

3. Returning to the first proposition, we submit that if our position taken on the second ground is entirely at fault—that is to say, if it be a fact that the original petition by the people of Latta alleged insufficient accommodations; and if this question was passed upon by the railroad commission; and if the decision of the rail-
205 road commission is final and it is not necessary to permit the railroad company to have the question of fact passed upon by

a court subsequent to the legislation or order of the railroad commission; and if, as a result of all this, it has been conclusively established, by the order of the commission, that the people of Latta, which has something like eleven passenger trains a day, including through trains north and south which stop at Latta, have not adequate local accommodations: then we contend, as a matter of law, that this is no excuse for the railroad commission, in order to enforce adequate local accommodations, to invade the domain of interstate commerce and require these adequate local accommodations to be given by interfering with interstate commerce trains; but that it is the duty of the railroad commission, within its legitimate sphere of operation, to require these local accommodations to be adequately met by requiring other trains, which we submit can be done, and should be done, only after a trial and without extending its authority so as to invade interstate commerce. We submit that the invasion by the railroad commission of the state of South Carolina of the rights of interstate commerce, if it be a secondary duty, is not necessary for the purpose of enforcing the primary duty, because other means can be used, and therefore its management of the question in this way is both inexpedient and illegal, and is an assumption of authority that does not exist in the railroad commission.

On this point, we submit that this Court has misinterpreted the decisions of the United States Supreme Court cited in the decision and in respondent's argument, to-wit: the cases of Lake Shore *v.* Ohio, 173 U. S. 285, and Cleveland, etc., *v.* Illinois, 177 U. S. 206 514.

In the case of Lake Shore *v.* Ohio, 173 U. S. 285, the Supreme Court of the United States never held that the state authorities of Ohio could regulate interstate commerce trains or require them to stop at any point. It simply held that a statute requiring three trains a day to stop at villages containing over three thousand inhabitants was not unconstitutional. It simply held that the railroad company could not refuse to comply with this statute by making all of its trains interstate commerce trains, and then refuse to comply with the statute because they were interstate commerce trains. It did not undertake to say that the railroad company could not run as many interstate commerce trains as were desirable, and held distinctly that the state of Ohio could compel it to run as many trains as were desirable to comply with the local statute. The decision clearly defined the distinction between interstate commerce service and local service, and held conclusively that one was independent of the other, and the authority controlling one could not control the other. Certainly nothing in that decision could justify the present holding, that in order to furnish local accommodations the railroad commission of a state can operate upon and use interstate commerce facilities to effectuate its purpose. We can conceive of state regulation only legitimately affecting interstate commerce when the physical circumstances are such that only a certain number of trains could run through a state, and that these trains were so interdependent in their relation to local and interstate conditions that one duty could not be physically performed without

performing the other; and if such a condition could possibly
207 prevail, then the state authority, in requiring local conditions to be met, would control interstate commerce trains incidentally, which would not be by a direct attack upon them, but simply as an incidental result in requiring local conditions to be met. For instance, if the physical condition of the road would permit only one train a day, it would seem that both authorities could require this train to be used for their purposes: this, however, would hardly be a possible situation.

No such situation exists here. It does not appear that the railroad commission cannot require local conditions to be performed by requiring the railroad company to run an indefinite number of trains without interfering with the interstate commerce trains. It would seem that the United States Supreme Court has properly considered this Lake Shore, *supra*, decision in the case of Cleveland, etc. *v.* Ohio, *supra*, when it states that

"This case is readily distinguishable from the one under consideration," (which is the same question now under consideration) "in the fact that the statute of Ohio required only that three regular passenger trains should stop at every station containing 3,000 inhabitants, leaving the company at liberty to run as many through passenger trains exceeding three per day as it chose, without restriction as to stoppage at particular stations. In other words, it left open the loophole which the statute of Illinois has effectually closed."

It will be observed that the Lake Shore *v.* Ohio, *supra*, decision was not an ettempt as an original proposition to control interstate commerce trains. The Case of Cleveland, etc. *v.* Illinois, *supra*, as in the case at bar, was a direct attempt to control interstate commerce trains, and hence the distinction made by the Supreme Court. It is true the Supreme Court states in the Lake Shore case that it is the primary duty of a railroad company to provide
208 for local accommodations, but it does not state that the secondary duty is not of equal importance, or that the primary duty cannot and should not be required without sacrificing the secondary duty, or that it is not the duty of state legislation to enforce the primary duty without a denial of the right of the railroad company to perform the secondary duty.

It will be observed that in the case of Cleveland, etc. *v.* Illinois, *supra*, there was a direct attempt to apply the statute of the state of Illinois so as to require an interstate commerce train to stop at county seats. The question of adequate local accommodations arose, as in the case at bar, as an affirmative defense. The question went to the Supreme Court of the United States on a writ of error from an order of the state court overruling demurrer to the answer which admitted the local accommodations as alleged in the answer. The Supreme Court of the United States in that case simply held that, local accommodations being admitted, there was absolutely no reason for the contention that a statute of Illinois could affect, even incidentally, an interstate commerce train. There is no reason for contending that that decision holds that state legislation can apply to an interstate commerce train, except incidentally, as in the Cleveland

case, if local accommodations are not supplied; but in that case, if there had been any question as to the want of adequate local facilities, and if it had been held that these local facilities had not been adequately supplied, then the Supreme Court would have necessarily held that this want of local facilities should have been remedied by giving more local facilities, and the want of them would not have been a justification for interfering with the interstate com-
209 merce trains.

Therefore, we contend that the holding of the Court in the case at bar, that a railroad company has no right to furnish interstate commerce accommodations until "after all local conditions have been adequately met," is absolutely a *non sequitur,* because that expression is simply used in the case of Cleveland, etc. *v.* Illinois, *supra,* as a result of the admission by way of demurrer to the answer that adequate local accommodations were furnished, and could not be construed into the alternative of the proposition, that if they were not furnished, then state authority would be so enlarged as to permit it to control interstate commerce trains.

This view, we contend, is a proper explanation of the decisions of the United States Supreme Court, as clearly shown in the case of Ill. Cent. R. R. *v.* Miss. R. R. Commission, 138 Fed. Rep. 327, Circuit Court of Appeals. Respondent's counsel printed in their argument this case practically in full. We submit that its reasoning cannot be questioned, and we must conclude that this Court in rendering its decision has overlooked this opinion. In the case referred to, there was some question as to local accommodations being adequate or inadequate. The Court said that if they were adequate the case of Cleveland *v.* Illinois, *supra,* would be all-controlling. But inasmuch as it was contended that they were not adequate, the Court decided that if they were not adequate this would not give the state authorities the right to control interstate commerce trains to make them adequate, but that

"The Supreme Court, in the case just cited, repeats what it had theretofore held, that railways are bound primarily and
210 adequately to provide for the accommodation of those to whom they are directly tributary, and who have granted to them their franchise, and contributed to their construction. The State unquestionably has ample power to require the complainant company to furnish adequate facilities and accommodations to the town of Magnolia. The citizens of Magnolia have not asked for such relief as could be granted them without interfering with the rights of others. They ask only to have trains Nos. 1 and 3 to stop. These trains were designed and scheduled for through travel, and to comply with Government contracts to carry the mails from Chicago to New Orleans. If the statutes may be applied to stop through trains at Magnolia, they may be stopped at all stations in Mississippi. To require these trains to stop at all at Magnolia seems unnecessary and unreasonable. If the accommodations afforded are not adequate, why single out the through mail trains, and seek to convert them into local trains? Why not, under existing statutes, or statutes to be enacted, exert the police power of the State to improve the service by having better equipments on the three passenger trains now in

use from Magnolia, and, if they are insufficient, by requiring other trains? The citizens of Magnolia are entitled to sufficient accommodations, and the State has the power to enforce the right; but when such right can be enforced otherwise, it is unreasonable to do so by interfering with the rights of others equally entitled to the protection of the law.

"We are of opinion that the order of the Railroad Commission is invalid, and that the complainant is entitled to relief. The decree of the Circuit Court is reversed, and the case remanded, with instructions to enter a decree for the complainant."

Returning to the conclusion reached by this Court:

"In order that respondent may have the opportunity of discharging its primary duty in the premises, without stopping trains No. 32 and 35 on flag, the writ will be so framed as to confer upon the railroad company the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains No. 32 and 35 on flag."

We may ask, What facilities would be substantially the same? To suit all parties, they must be defined. They cannot be defined in this case, because the issue has never been before the Court, and has never been defined by the railroad commission. No testimony relating to these facilities has been considered. The only way in which the question has ever been raised, is by way of affirmative de-
211 fense, and the Court has not considered this defense. The object of the action was, not to compel additional facilities as an original alternative proposition, but to stop trains Nos. 32 and 35 at Latta, S. C. We submit, that on the question of stopping trains Nos. 32 and 35 at Latta, the decision of the Court should have been, first, that regardless of the testimony, these trains being interstate commerce trains, they could not be interfered with by local legislation; and, second, if the right to stop them depended upon the proof of respondent's affirmative defense as to adequate accommodations, then the same was proven by the overwhelming weight of the testimony, which should have been considered, but was not considered, by the Court; and, third, that the matter of adequate local accommodations furnished otherwise than by interstate commerce trains should not be required as an original or alternative proposition, because this was not the object of the action, and in no sense has respondent had a hearing on this point, which question could only be determined in a proper proceeding to that end directed.

For reasons above given, we must earnestly submit to the Court the propriety of giving to the respondent, petitioner herein, a rehearing on the important questions involved.

WILLCOX & WILLCOX,
Respondent's Counsel.

212 STATE OF SOUTH CAROLINA, *Florence County:*

I hereby certify that I am a practising attorney, enrolled as such in the Supreme Court of the State of South Carolina; that I have no interest whatever in the above entitled action; that I have con-

sidered with care the above petition for a re-hearing, and believe there is merit in respondent's contention.

GEORGE GATTELL.

March 13, 1906.

Application this day having been made to me on the foregoing petition for re-hearing in the above stated case,

It is Ordered That respondent, Atlantic Coast Line Railroad Company, have leave to file said petition with the Clerk of the Supreme Court;

And it is Further Ordered That all proceedings herein be stayed until the further order of this Court upon due consideration of the petition.

C. A. WOODS,
Associate Justice.

March 17th 1906.

213 After careful consideration of the Petition for Rehearing in this case the Court is satisfied that no material principle of law or fact has been overlooked or disregarded. It is therefore ordered that the Petition for Rehearing be dismissed and the order heretofore granted staying the Remittitur be revoked.

Y. J. POPE, *C. J.*
EUGENE B. GARY, *A. J.*
IRA B. JONES, *A. J.*
C. A. WOODS, *A. J.*

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 9 Apr. 1906. U. R. Brooks, Clerk.

214 [Endorsed:] The State of South Carolina, in the Supreme Court. C. W. Garris, J. H. Wharton and B. L. Caughman, Railroad Commissioners, Petitioners-Plaintiffs, *against* Atlantic Coast Line Railroad Company, Defendant-Respondent. Petition for re-hearing. Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 19 Mar. 1906. U. R. Brooks, Clerk. Willcox & Willcox, Counsel for Defendant-Respondent.

215 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

J. H. WHARTON, B. L. CAUGHMAN, and J. H. EARLE, who by Order of Court, prosecuted this case as Railroad Commissioners, Plaintiffs, in Lieu of C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, Railroad Commissioners, Plaintiffs,

against

THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

The State of South Carolina to the Atlantic Coast Line Railroad Company, Greeting:

Whereas, C. W. Garris, J. H. Wharton and B. L. Caughman, did on the 22d day of October 1904, file an application to the Supreme

Court of this State for a Writ of Mandamus compelling the Atlantic Coast Line Railroad Company to obey the order of the Plaintiffs requiring it to stop certain trains at its station in the town of Latta, S. C., for the accommodation of passengers, which petition is as follows:

"(1.) That the said plaintiffs were at the time- hereinafter stated and still are, the duly qualified Railroad Commissioners of the State of South Carolina.

(2) That the Atlantic Coast Line Railroad Company was at the times hereinafter mentioned, and still is, a railroad corporation organized and existing under the laws of the State of South Carolina, and known by the name Atlantic Coast Line R. R. Company, and was the owner of and operating a certain railroad known as the Atlantic Coast Line Railroad, leading from the town of Wilson, through the town of Fayetteville, in the State of North Carolina, to Florence, in the State of South Carolina, and operating a branch line commonly known as the Latta Branch Railroad, leading from the town of Latta in Marion county, on said railroad, to the town of Clio, in Marlboro County, commonly known as the Latta Branch Railroad.

(3) That on June 7, 1904, certain citizens of the State of South Carolina, residing at Latta, and along the line of the said Latta Branch Railroad, filed a petition with the said plaintiffs, as Railroad Commissioners, of the State of South Carolina, alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient acommodations for passengers travelling on said Railroad, and asking the said railroad company be compelled to stop its passenger trains numbers 32 and 35 at its station in the town of Latta, when flagged, for the purpose of receiving and delivering passengers at its station.

(4) That thereafter, on July 29, 1904, the said R. R. Com'rs of the State of South Carolina, after investigating the facts
216 stated in said petition, and after notice to and hearing the said above named defendant in reference to the facts of said petition, found as a matter of fact that sufficient accommodations were not furnished the citizens along the said Latta Branch Railroad and in the town of Latta by the Atlantic Coast Line Railroad Company at its station in Latta, South Carolina, and said Railroad Commissioners thereupon made and order that the said passenger trains numbers 32 and 35 operated by the said Atlantic Coast Line Railroad Co., should stop when flagged at the said Latta station on and after Aug. 1, 1904.

(5) That a copy of the said order of the R. R. Com'rs was served upon the Atlantic Coast Line R. R. Co. more than sixty days prior to the commencement of this action, but that the said R. R. Company had neglected and refused to comply with the said order to stop said trains at said station for the purpose of receiving and delivering passengers.

(6) That on October 7, 1904, the said R. R. Comrs. of the State of S. C. requested the Attorney Gen'l of the State of South Carolina to commence this action on their behalf to compel the said

R. R. Company to comply with said order, and to stop said trains numbers 32 and 35 on flag at the station in Latta for the purpose of receiving and discharging passengers on said trains."

And, whereas, the Hon. C. A. Woods, Associate Justice of the Supreme Court of S. C., had on Oct. 15, 1904, issued the following rule which was served on the Atlantic Coast Line Railroad Company along with the said application on October 18, 1904.

217 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,

vs.

THE ATLANTIC COAST LINE RAILROAD CO., Defendant.

On hearing the verified complaint in the above entitled action, and on motion of U. X. Gunter, Jr. Esq., Attorney General for the plaintiffs it is ordered:

That the defendant show cause before me at my chambers in Marion on the 12th day of Nov. next, at 11 o'clock A. M. or if any they can why a writ of mandamus should not issue requiring that the trains mentioned in the complaint be stopped at the defendant's station in Latta for the purpose of receiving and discharging passengers.

That a copy of this order be served on the defendant company with the summons and complaint in this action.

(S'g'd) C. A. WOODS,
Associate Justice Supreme Court.

Oct. 15, 1904.

218 And, whereas, the defendant, the Atlantic Coast Line Railroad Company did demur to said petition on several grounds;

And, whereas, the said Court did overrule the said demurrer, with leave to the Defendant, the Atlantic Coast Line Railroad Company, to file a return to the rule to show cause, which had been issued;

And whereas, the said Atlantic Coast Line Railroad Company did file their return and Answer to the said Rule;

And whereas, on the 15th day of May, 1905, the Supreme Court did order testimony taken in the case before F. F. Covington, Referee;

And, whereas, the said F. F. Covington, as Referee, did hold sundry references, examine sundry witnesses, and did on the 27th day of December 1905, make his report to the said Court, accompanied by the testimony taken;

And whereas, the said Court did adjudge and file their judgment on the 26th day of Feb. 1906, that the Writ of Mandamus should be issued, but in order that the said Atlantic Coast Line Railroad Company may have the opportunity of discharging its primary duty in the premises, without stopping trains Nos. 32 and

35 on flag, that the Railroad Company should have the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains No. 32 and 35 on flag;

Now, therefore, That due and speedy justice may be done, you the defendant, the Atlantic Coast Line Railroad Company, are hereby commanded that you, the said Atlantic Coast Line Railroad Company, do immediately after the receipt of this writ, stop your passenger trains Nos. 32 and 35 at your station in the town of Latta, when flagged, for the purpose of receiving and delivering passengers at said station, with the alternative right on your part to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains Nos. 32 and 35 on flag, and that you do pay the costs and disbursements of this proceeding, to be taxed by the Clerk of this Court, and in what manner this writ shall have been executed you make appear to said Supreme Court, and there returning this writ.

Witness U. R. Brooks, Esq., Clerk of the Supreme Court, and the seal of the said Court at the office of the Clerk of this Court in Columbia this 18th day of April A. D. 1906.

[Seal of Supreme Court.]

U. R. BROOKS, *Clerk.*

LE ROY F. YOUMANS,
Attorney General, and
M. C. WOODS,
Plaintiffs' Attorneys.

I certify this to be a true copy of the original.

Given under my hand and seal of the Supreme Court Apr. 18, 1906.

[SEAL.] U. R. BROOKS, *Clerk.*

A true copy.

U. R. BROOKS, *Clerk.*

Endosed on cover: File No. 20,260. South Carolina. Supreme Court. Term No. 296. Atlantic Coast Line Railroad Company, plaintiff in error, *vs.* J. H. Wharton, B. L. Caughman, and John H. Earle, as Railroad Commissioners of the State of South Carolina. Filed May 18th, 1906. File No. 20,260.

In the Supreme Court of the United States, October Term, 1906.

No. 296.

ATLANTIC COAST LINE RAILROAD COMPANY, Plaintiff in Error,

vs.

J. H. WHARTON, B. L. CAUGHMAN, and JOHN H. EARLE, as Railroad Commissioners of the State of South Carolina.

In Error to the Supreme Court of the State of South Carolina.

Stipulation that Certain Blue Prints be Added to the Transcript of the Record.

Now come the parties to the above entitled cause, The Atlantic Coast Line Railroad Company, by its attorney of record, P. A. Willcox, Esquire, and Messrs. J. H. Wharton, B. L. Caughman and John H. Earle as Railroad Commissioners of the State of South Carolina, by Le Roy F. Youmans, Esquire, the Attorney-General of said State, and stipulate and agree that the blue prints hereto annexed marked respectively "William J. Craig, Exhibit A," and "William J. Craig, Exhibit B," are true copies of the maps which were introduced in evidence by and on behalf of the Atlantic Coast Line Railroad Company in connection with the deposition of William J. Craig, and are true copies of the maps marked "Exhibit A" and "Exhibit B" referred to on page 101 of the printed transcript of the record of said cause now pending in the Supreme Court of the United States; and further stipulate and agree that the same may be made part of the transcript of record on file in this court in the above entitled cause.

ATLANTIC COAST LINE RAILROAD COMPANY,
By P. A. WILLCOX, *Its Attorney.*
J. H. WHARTON,
B. L. CAUGHMAN,
JOHN H. EARLE,
As Railroad Commissioners of the State of South Carolina,
By LE ROY F. YOUMANS, *Attorney-General.*

(Here follow blue prints marked Exhibits A & B.)

[Endorsed:] File No. 20260. Supreme Court U. S. October term, 1906. Term No. 296. Atlantic Coast Line R. R. Co., P. E., vs. J. H. Wharton *et al.*, R. R. Com'rs, &c. Stipulation for addition to record. Filed Aug. 4, 1906.

Office Supreme Court, U. S.
FILED
NOV 5 1907
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 36.

ATLANTIC COAST LINE RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

J. H. WHARTON, B. L. CAUGHMAN, AND JOHN H. EARLE, AS RAILROAD COMMISSIONERS OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

MEMORANDUM BRIEF OF ARGUMENT FOR PLAINTIFF IN ERROR.

P. A. WILLCOX,
FREDERIC D. McKENNEY,
Attorneys for Plaintiff in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 29569

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 36.

ATLANTIC COAST LINE RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

J. H. WHARTON, B. L. CAUGHMAN, AND JOHN H. EARLE, AS RAILROAD COMMISSIONERS OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

MEMORANDUM BRIEF OF ARGUMENT FOR PLAINTIFF IN ERROR.

This case comes before this court on writ of error to the Supreme Court of the State of South Carolina, to review a judgment passed by the latter court in a certain mandamus proceeding, wherein the Railroad Commission of the State of South Carolina had invoked the original jurisdiction of the State Supreme Court to enforce an order of said Railroad Commission issued on or about July 29, 1904, against the Atlantic Coast Line Railroad Company.

The order of the Railroad Commission is as follows:

> "On petition of the town authorities of the town of Latta and of Clio and citizens along the Latta Branch Railroad for the stopping of trains Nos. 32 and 35 on flag for receiving and delivering passengers at said station.
>
> "After personal inspection of the situation at Latta and the demand of said citizens for these accommodations, it appears to this board that sufficient accommodation was not furnished to these citizens to fulfill the requirements of the statutes of this State. The evidence was sufficient to warrant this board in demanding that better accommodation should be furnished, and that it was not unreasonable to ask the said company to stop trains Nos. 32 and 35 on flag.
>
> "Therefore, it is hereby ordered that said trains shall stop on flag at said Latta station on and after August 1st" (R., 71).

The receipt of a copy of this order was acknowledged by the general superintendent of the Atlantic Coast Line Railroad Company under date of August 30, 1904 (R., 72).

More than sixty days from August 1st, the date when said order was by its terms effective, having elapsed, and no provision having been made by the railroad company for the stoppage of said trains Nos. 32 and 35, as specified therein, said Railroad Commission filed its petition for a *mandamus* to enforce its said order (R., 9, 10) invoking to that end the provisions of section 2119 of the Code of Laws of South Carolina, revision of 1902, which reads as follows:

> "SECTION 2119. If any railroad company shall neglect or refuse to comply with the regulations of this chapter, or with the rules and regulations prescribed by said commissioners within the limits of their authority, such company shall be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or Circuit Court, upon application of the commissioners, or a majority of them, to require compliance with said laws or said rules and regula-

> tions, and failure to comply with said writ of mandamus shall be punishable as for contempt; and for any willful violation of any of said laws, or failure to comply with the requirements of such rules and regulations, the court may award such costs and counsel fees on the return of said writs, and after due deliberation thereon, as may be just."

In said petition the Railroad Commission alleged that the Atlantic Coast Line Railroad Company was a corporation *organized and existing under the laws of the State of South Carolina,* which operated a railroad from Wilson through the town of Fayetteville, in North Carolina, to Florence, in South Carolina, and also owned and operated the so-called Latta Branch Railroad; that certain citizens of South Carolina, residing at Latta and along the line of the Latta Branch Railroad, in said State, had alleged in a petition filed before said commission that said railroad company "was furnishing insufficient accommodations for passengers traveling on said railroad, and asking that the said railroad company be compelled to stop its passenger trains, numbers 32 and 35, at its station in the town of Latta when flagged for the purpose of receiving and delivering passengers at said station;" that said Railroad Commission, "after investigating the facts stated in said petition, and after notice to and hearing the said" railroad company in reference to the facts of said petition, found as a matter of fact "that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad and in the town of Latta" by said company, and had ordered "that the said passenger trains numbers 32 and 35, * * * should stop when flagged at the said Latta station on and after August 1, 1904;" that a copy of said order had been served upon said company more than sixty days prior to the commencement of this action, but said company had "neglected and refused to comply with the said order to stop said trains at said station for the purpose of receiving and delivering passengers."

On the filing of said petition one of the associate justices of said State Supreme Court laid a rule upon the Atlantic Coast Line Railroad Company requiring it to show cause "why a writ of mandamus should not issue, requiring that the trains mentioned in the complaint (namely, Nos. 32 and 35) be stopped at the defendant's station in Latta for the purpose of receiving and discharging passengers."

This rule as issued was returnable "at chambers" (R., 11).

Responding to this rule the defendant company filed a demurrer to the petition (R., 12, 13), and thereupon, by consent of counsel, an order was issued requiring the return to the rule to "be heard before the full court" (R., 12).

By its demurrer the railroad company asserted:

(1) That the Railroad Commission was without power to make the order, the violation of which was alleged as a cause of action.

(2) That the order of the Railroad Commission was not the result of a judicially determined fact, and that the defendant company, not having had its day in court on the merits of said order, the enforcement thereof would result in depriving defendant of its property without due process of law, contrary to section I, article 14, of the Constitution of the United States.

(3) That the Supreme Court of South Carolina was without jurisdiction to try the questions involved in the petition of the Railroad Commission, for reasons therein specified, but not necessary to be here enumerated.

(4) That while the petition of the Railroad Commission "sets forth that, as a matter of fact that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad and in the town of Latta," it does not state "as a fact that said accommodations do not exist," and

whether such be the truth is a matter of fact for judicial determination.

(5) That if it be within the power of the Railroad Commission to require the defendant company to give greater conveniences to a specific locality "this power does not embrace the right of the Commission to regulate this convenience by a control of the operation of specific trains" (R., 12, 13).

This demurrer was overruled (see opinion of the State court, R., 13-17) and the defendant railroad company answered the averments of the petition fully to the following effect:

(1) It denied that it was a corporation existing under the laws of the State of South Carolina, and averred that it was a corporation organized and existing under the laws of the State of Virginia.

(2) It admitted that a petition had been filed by certain citizens of the State of South Carolina "residing at the station of Latta, South Carolina," which petition was framed "solely for the purpose of requiring the defendant to stop its passenger trains Nos. 32 and 35 at the station known as the town of Latta, on flag;" but denied as said petitioners alleged in their said petition that the "Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers traveling on said railroad."

(3) It admitted that it was notified to appear before said Railroad Commission, but denied that it had had "such a hearing before the Commission, as is required by law, with the privilege of having witnesses sworn to testify against the reasonableness of the petition;" and it further denied "that the Commission found, as a matter of fact, that sufficient accommodation was not furnished the citizens along the

Latta Branch Railroad and in the town of Latta," at its said Latta station.

(4) It admitted that the Railroad Commission had made the order above quoted with respect to trains Nos. 32 and 35, but denied "that the finding of said plaintiff's railroad commissioners involved a finding of insufficient accommodation as alleged."

By way of affirmative defense, the defendant company further answered the rule as follows:

> "The defendant alleges that sufficient passenger accommodations are now furnished the citizens of Latta and those residing along the Latta Branch Railroad, so that in every respect of passenger travel they are furnished every reasonable facility; that in addition to a number of passenger trains of local character daily, there is also afforded them the convenience of a daily passenger train each way for through travel other than trains thirty-two and thirty-five; that trains thirty-two and thirty-five are known as the Florida and West Indian Limited trains, running between the cities of New York and Tampa, Fla., making a daily connection with steamship lines plying between Tampa, Fla., and Havana, Cuba; that said trains are primarily for the purpose of through passenger traffic, which cannot be accommodated otherwise; that said trains are engaged in the interstate transportation of passengers and United States mail through the States of New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida, with through connections at the city of New York and at Tampa, Florida, and intermediate cities with what is known as the wider traveling public that cannot be accommodated by defendant if these trains are localized; that the through travel, the carrying of United States mail and interstate commerce travel has grown to such an extent that it can only be accommodated by operation of the trains in question, running a very fast schedule, stopping at only neces-

sary points; that these trains are operated for this class of business, other trains affording ample accommodations and facilities for all other business; that the trains in question, now stopping only at necessary points, are run necessarily with a very fast schedule, in order to accommodate the business described, and if the trains are required to stop at Latta, S. C., and points similar to the station of Latta, S. C., the running time of these trains will be much lengthened, their usefulness for their primary object would be entirely destroyed, said trains could not be operated and the defendant company would be denied one of its principal sources of revenue and its ability to accommodate the business described; that the defendant operates these trains at a great expense, with every available modern equipment for the accommodation of through travel, and in its competition with other through (travel) lines in the business involved, must maintain their efficiency as to fast schedules and in other respects, and if these trains are interfered with by local legislation of the character involved and are required to stop at Latta, S. C., and similar points, the defendant will be unable to compete with other similar trains operated by competing lines and must abandon these trains and the business in question; that the trains in question are not regular passenger trains for carrying passengers from one point to another in the State of South Carolina, such traffic being amply provided for by other trains; that the trains in question are used exclusively for interstate traffic from and to points without the State of South Carolina, except such traffic as may be accommodated by the stopping of these trains at points necessary in their being operated for their primary purposes as interstate commerce trains; that these trains are not subject to regulation by the statutes of the State of South Carolina, or by its Railroad Commission, under the circumstances involved in the alleged cause of action, and to stop them, as prayed for, would impede and obstruct insterstate commerce and deny to plaintiff a rightful and judicious management of its property; that said order of the Railroad Commission of South

> Carolina is unreasonable, unnecessary, a direct burden upon interstate commerce, and therefore a violation of and conflict with section 8 of article 1 of the Constitution of the United States, which provides that Congress shall have the power to regulate commerce with foreign nations and among the several States, and further, that said order is a direct and unnecessary interference with the speedy carriage of mails of the United States" (R., 18, 19).

Upon the issues raised by the defendant's answer, and particularly with reference to those raised by this affirmative defense, the State Supreme Court, on motion of the Attorney General, entered an order referring the cause to a master:

> "To take testimony on all issues involved and report the same to this court, as soon as the convenience of all parties interested in the taking of said testimony will permit, and said referee is hereby empowered to report any special matter" (R., 20).

Under this order of reference the referee took and returned to the Supreme Court of the State a large amount of testimony, which is printed in full at pages 20 to 119, inclusive, of the Transcript of Record before this court. Subsequent to the report of the referee, the issues came on for hearing and determination before the Supreme Court of the State.

That court, in its so-called "statement of facts," refers to this testimony and quotes meagerly therefrom; but held that—

> "The facts were determined by a tribunal (the Railroad Commission) well recognized and adopted throughout the land. The defendant was notified to appear and contested the facts upon their merits."
>
> "As the facts were judicially determined by a tribunal (the Railroad Commissioners) empowered by statute to make such adjudication, they are not subject to review by this court, in the absence of allega-

tions charging fraud or other grounds for setting aside the adjudication."

"Therefore, the question to be determined is, whether the order of the commissioners, requiring the railroad company to stop at Latta (if flagged) its two fast mail trains engaged in carrying interstate passengers, was a burden upon interstate commerce, when the accommodations are otherwise inadequate."

"The mere fact that they are fast mail trains engaged in carrying interstate passengers, does not exempt them from regulation under the statute of the State" (R., 123).

Referring to the opinions of this court in Lake Shore Company *vs.* Ohio, 173 U. S., 285, and Cleveland, etc., Railroad Company *vs.* Illinois, 173 U. S., 285, and Same against Same, 177 U. S., 514, the State Court said that the Supreme Court of the United States had—

"recognized the principle that it is the duty of the railroad company to provide, *primarily*, sufficient accommodations for those to whom it is directly tributary."

"From this doctrine, it follows as a necessary corollary that it is only 'after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic.'"

"The facts judicially determined by the commissioners show that the accommodations are inadequate, and that the citizens of Latta are entitled to relief."

"In seeking to give relief, the commissioners have ordered trains Nos. 32 and 35 to stop when flagged."

"This court has reached the conclusion that the writ of mandamus should be issued; but in order that the respondent may have the opportunity of discharging its primary duty in the premises, without stopping trains Nos. 32 and 35 on flag, the writ will be so framed as to confer upon the railroad company the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains Nos. 32 and 35 on flag."

> "It is the judgment of this court that the writ of mandamus be issued in accordance with the conclusions herein announced" (R., 125, 126).

To review the conclusions so expressed by the State Supreme Court in its opinion, and made effective by its judgment, the defendant company promptly filed a petition for rehearing, which petition, among other things, stated its position upon two points involved in the controversy, as follows:

> 1st. "If it is the primary duty of the railroad company to provide for local accommodations, and if it is the secondary duty of the railroad company to provide for interstate commerce accommodations, it cannot but be contended that these two duties, denominated 'primary' and 'secondary,' are of equal importance, * * * and that it is equally the duty of the railroad company to provide for both, even if one be termed 'primary,' and the other 'secondary.' * * * That the primary duty of providing for the local traveling public is wholly within the domain of State authority, and that the secondary duty of providing for interstate commerce travel is wholly with the interstate commerce authority; and in enforcing either the primary or secondary duty, neither the State authority nor the interstate commerce authority can invade the jurisdiction of the other. * * * We do not question the power of the Railroad Commission, through its orders, *the State Court controlling these orders upon their merits,* to enforce adequate local accommodations at Latta; but inasmuch as these adequate accommodations can be required without invading the domain of interstate commerce, it is the duty of the State authority to require these adequate accommodations (to be furnished) without destroying accommodations which are afforded interstate commerce travel, the regulation of which is exclusively within the domain of Congressional authority" (R., 127).
>
> 2nd. "If a local statute or the order of a railroad commission (acting under authority of the local

> statute) can control the operation of interstate commerce trains" * * * "the fact of inadequate performance of the local duty must be determined by due form of law, and * * * such fact in this case has never been ascertained, much less ascertained by due form of law" (R., 127, 128).

This petition for a rehearing was overruled (R., 137), and thereupon the writ of mandamus was issued in the following terms:

> "Now, therefore, that due and speedy justice may be done, you the defendant, the Atlantic Coast Line Railroad Company are hereby commanded that you the said Atlantic Coast Line Railroad Company do immediately after the receipt of this writ stop your passenger trains Nos. 32 and 35 at your station in the town of Latta, when flagged, for the purpose of receiving and delivering passengers at said station, with the alternative right on your part to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains Nos. 32 and 35, on flag; and that you do pay the costs and disbursements of this proceeding to be taxed by the clerk of this court, and in what manner this writ shall have been executed you make appear to said Supreme Court, and there returning this writ."

To review this mandatory order of the Supreme Court of the State of South Carolina the writ of error before this court was sued out.

The plaintiff in error contends that the judgment complained of should be reversed:

1st. Because it constitutes a direct and positive burden upon interstate commerce, and hence was beyond the jurisdictional powers of the State Supreme Court. (Section 8, article 1, of the Constitution of the United States; assignments of error 8, 9, 10, and 11.)

2nd. Because the refusal of the Supreme Court of the State of South Carolina to consider the evidence taken before the referee appointed under its order, with respect to the sufficiency of accommodations at Latta for the local and through passenger traffic, amounted to a denial of the right on the part of the defendant railroad company to demonstrate the sufficiency of such accommodations before being required to stop at Latta, specific trains which were especially designed and operated for the accommodation of through interstate traffic, thus constituting a deprivation of property without due process of law contrary to the prohibitions of section 1, article 14, of the Constitution of the United States; assignments of error 1, 2, and 6.

3rd. That the judgment of the said Supreme Court being in the alternative, namely, to stop passenger trains Nos. 32 and 35, when flagged, or "to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains Nos. 32 and 35, on flag," amounts to an attempt on the part of the court to exercise, under the guise of a judgment, both judicial and legislative functions, which cannot legally be done. To require the stopping of specific trains upon facts judicially ascertained to warrant such stoppage is a judicial function. To require the furnishing of specific facilities, when such facilities are not required by any statute or other legislative order, is a legislative function. Where, as in this case, the effect of the legislative provisions of the judgment is to either interfere with or provide for interstate commerce or interstate transportation, it is a clear invasion of the legislative powers of the Congress of the United States, and void under the provisions of section 8, article 1, of the Constitution of the United States, and the enforcement of the judgment of a State court requiring, in general terms, the furnishing of additional transportation facilities by an interstate carrier in the absence of legislative authority or provision therefor,

would amount, in so far as the defendant was concerned, to a deprivation of property without due process of law.

In this case the main question is whether the order of the Railroad Commission as interpreted and ordered to be enforced by the Supreme Court of South Carolina, is valid with reference to the provisions of the Constitution of the United States, and this depends upon the question, first whether the result of the enforcement of said order will constitute or amount to a mere incidental interference with interstate commerce, based upon a legal exercise of the police powers of the State, and second whether in any event its enforcement will result in a deprivation of property without due process of law.

Admitting for the purposes of argument that a State Railroad Commission, when duly authorized by statute so to do, has the power to compel an interstate carrier of passengers, mail, and express to stop its fast interstate trains at specified towns or cities in which it maintains depots or stations, if said company has not made proper and adequate provision by other trains for both the local and interstate travel to and from said towns or cities, it is nevertheless certain that if said railroad company has furnished all proper and adequate or reasonable accommodations to said towns or cities then any interference with the interstate trains of said company, either directly by statute, or by order of a Railroad Commission claiming to act under authority of a statute, will be illegal, and constitute a violation of the commerce clause of the Federal Constitution.

> "In reviewing statutes of this nature, and also orders made by a State Railroad Commission, it frequently becomes necessary (for this court) to examine the facts upon which they rest and to determine from such examination whether there has been an unconstitutional exercise of power and an illegal interference by the State or its commission with the interstate commerce of the railroad.

Whether there has or has not been such an interference is a question of law arising from the facts" * * * "The order (to stop) cannot be viewed alone in the light of ordering a stop at one place only, which might require not more than three minutes." * * * "It is the question whether these (such) trains can be stopped at all at any particular station when proper and adequate facilities are otherwise afforded such station. If the commission can order such a train to be stopped at a particular locality under such circumstances, then it could do so as to other localities, and in that way the usefulness of a through train would be ruined and the train turned from a through to a local one in Mississippi (South Carolina). The legislature of a State could not itself make such an order, and it cannot delegate the power to a commission to do so, in its discretion, when adequate facilities are otherwise furnished.

"The transportation of passengers on interstate trains as rapidly as can with safety be done is the inexorable demand of the public who use such trains. Competition between great trunk lines is fierce and at times bitter. Each line must do its best even to obtain its fair share of the transportation between States, both of passengers and freight. A wholly unnecessary, even though a small, obstacle ought not, in fairness, to be placed in the way of an interstate road, which may thus be unable to meet the competition of its rivals. We by no means intend to impair the strength of the previous decisions of this court on the subject, nor to assume that the interstate transportation, either of passengers or freight, is to be regarded as overshadowing the rights of the residents of the State through which the railroad passes to adequate railroad facilities. Both claims are to be considered, and after the wants of the residents within a State or locality through which the road passes have been adequately supplied, regard being had to all the facts bearing upon the subject, they ought not to be permitted to demand more, at the cost of the ability of the road to successfully compete with its rivals in the transportation of interstate passengers and freight."

Mississippi Railroad Commission *vs.* Illinois Central R. R., 203 U. S., 335.

"The elementary proposition that railroads from the public nature of the business by them carried on and the interest which the public have in their operation are subject, as to their State business, to State regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine. Accepting this general rule, the assignments of error rest upon the hypothesis that the order which the court below enforced was so arbitrary and unreasonable in its character as to transcend the limits of regulation and to be in effect a denial of due process of law or a deprivation of the equal protection of the laws.

"As the public power to regulate railways and the private right of ownership of such property coexist and do not the one destroy the other, it has been settled that the right of ownership of railway property like other property rights finds protection in constitutional guarantees, and, therefore, wherever the power of regulation is exerted in such an arbitrary and unreasonable way as to cause it to be in effect not a regulation but an infringement upon the right of ownership, such an exertion of power is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment.

"In coming to consider the question just stated it must be borne in mind that a court may not, under the guise of protecting private property, extend its authority to a subject of regulation not within its competency, but is confined to ascertaining whether the particular assertion of the legislative power to regulate has been exercised to so unwarranted a degree as in substance and effect to exceed regulation, and be equivalent to a taking of property without due process of law, or a denial of the equal protection of the laws."

It is settled—

"that the nature and extent of the existing facilities furnished by a carrier for the public convenience

> are essential to be considered in determining whether an order directing an increase of such facilities is just and reasonable, *and that the deficiency of facilities must clearly appear to justify an order directing the furnishing of new and additional facilities.*"
>
> Atlantic Coast Line R. R. Co. *vs.* North Carolina Corporation Commission, 206 U. S., 1.

There is no conflict in the evidence which is before this court, and which was also before the Supreme Court of South Carolina, but which the latter court refused to consider, as to the character of the facilities furnished by the Atlantic Coast Line Railroad Company to the town of Latta. According to the United States census of 1900, Latta had a population of 453 persons; Clio a population of 508, and Dunbar, on the Latta Branch Railroad, a population of 115. The other intermediate points on said branch line had populations of less than fifty persons, and hence are not enumerated in the census.

Eleven (11) daily passenger trains in all directions afford the inhabitants of Latta and its environs opportunity for steam railroad transportation to nearby and distant points (R., 101).

The possibilities of daily travel both to and from Latta are shown at length and in detail at pages 98 to 101 of the transcript of record. From this testimony it appears that the inhabitants of Latta and of the surrounding country have at least a double daily passenger service in practically all directions; that such inhabitants have a distinct advantage in the way of such facilities over neighboring cities and towns of very much greater population and of greater municipal importance along the line of the Atlantic Coast Line Railroad Company in that, in addition to the purely local service said town is served daily, in each direction, by the through New York and Florida express trains, Nos. 39 and 40, and it further appears that if desired the inhabitants of Latta and the towns along the Latta Branch can make reasonably proper connection with train No. 35, north-

bound, in the afternoon, either by traveling to Peedee Junction or Florence, distant from Latta, respectively, eleven (11) and twenty (20) miles, or by driving from Latta to Dillon, a distance of six (6) miles, making connection with said train No. 35 for New York, if desired, at any one of the places mentioned. The south-bound train, No. 35, is scheduled to reach Dillon at 3.05 in the morning and Florence about 4 o'clock in the morning. It seems hardly probable that many of the residents of Latta and its suburbs are filled with the yearning desire of leaving Latta, bound south, at such hour, and in view of the specific object for which this train was established and is operated, namely, to serve primarily the through traffic between New York and Florida, it is hardly to be presumed that even the Railroad Commission of South Carolina would insist that the train scheduled with respect either to the time of initial departure or arrival at destination should be altered in order that said train may be made to pass Latta at a more convenient and reasonable hour.

With respect to the details of accommodations actually furnished by the defendant Railroad Company to the residents of Latta and its environs, we respectfully refer to pages 101 to 113 of our main brief.

A consideration, on the part of the Supreme Court of the State of South Carolina, of the testimony submitted on behalf of the defendant Railroad Company before the referee at Latta, Clio, and Wilmington would have inevitably forced that court to the conclusion that the facilities and accommodations furnished by this Railroad Company to the people of Latta were not only adequate, but exceedingly generous. The conclusion which that tribunal must inevitably have drawn from the consideration of the testimony in question would have logically compelled the holding by said tribunal that the peremptory order of the State Railroad Commission requiring the stoppage at the hamlet of Latta of these through interstate mail and passenger trains was unreason-

able, invalid and not to be enforced. To avoid this result, the Supreme Court of South Carolina refused to consider the evidence in question, although the same had been taken under its order by its own referee appointed for that purpose. This declination was based upon the proposition that the State Railroad Commission was possessed of judicial powers in the matter of ascertaining and determining the facts concerning the adequacy of facilities and accommodations furnished complaining inhabitants by the Railroad Company in question, and that the findings of fact and conclusions of said Commission in such regard were not subject to review by the State courts.

This is contrary to the view of this court as expressed in the Railroad Commission cases above cited. If adhered to in the case at bar it will result in the imposition of a burden upon the plaintiff in error with respect to the movement of its interstate trains without in fact permitting said company to demonstrate anywhere before any tribunal the fact that it had and did fully otherwise perform its duty to the residents of the complaining hamlet.

A cursory examination of the various letters which passed between the town and railroad authorities and the petitions which were before the Railroad Commission, will show that it was not general inadequacy of accommodation or facilities that the people of Latta and its tributary towns and country were complaining of. What they wanted and what they demanded in unequivocal terms was the stoppage of these specific through interstate commerce trains.

The petition of Bethea, the intendent of Latta and his associates, which was before the Railroad Commission and with other similarly worded documents presumably furnished the basis for the Commission's order, is as follows:

> *"To the Honorable Board of Railroad Commissioners:*
>
> "Having made effort with the railroad authorities to stop trains Nos. 32 and 35, without effect, we the undersigned, town council and business men of Latta,

> S. C., hereby petition your honorable Board to make Latta a flag station *for said trains* for passengers only" (R., 61).

In transmitting this petition to the Board of Railroad Commissioners, Intendant Bethea naively remarks that—

> "We learn that if your Board think it will be of any service, we can get all the stations between Latta and Clio to send them *as they are anxious for this train to stop*" (R., 61).

The Board referred this petition "requesting flag stops for Nos. 32 and 35" at Latta to the railroad company with the "hope that this is a reasonable demand," and that "these stops on flag" would be made "without a formal hearing in this office" (R., 63).

The reply of the railroad company, showing why in its view the request of Latta was not considered to be reasonable and why the desired stops could not be made without destroying the character and usefulness of the trains specified, appears at pages 64, 65, and 68 of the printed transcript.

Under date of July 1, 1904, the Commission informed the company "that the Attorney General has given the citizens of Latta the information that this Board can require the trains referred to to stop at Latta if the local conditions have not been adequately met," and said citizens demand that "we have said trains stopped, as they have not the required accommodations they are entitled to under the law" (R., 69).

Under date of July 18, 1904, the Commission advised the company that it had "decided before taking final action in the matter of the train service rendered the people of Latta to make a personal visit to Latta." * * * "We will be glad to have you meet us" there (R., 70).

On the appointed day, Mr. Willcox, one of the company's attorneys, and Mr. Royall, its general superintendent, met two of the Railroad Commissioners at Latta for the purpose of this personal inspection. No witnesses were summoned or

called by either party to the controversy and no evidence in the way of documents or reports was submitted.

Subsequently the Commission passed its order, which is set forth at large herein *ante*.

This order requiring the company to stop the trains in question at Latta on flag recites that it is based upon the "personal inspection of the situation at Latta and the demand of the citizens for these accommodations," from which it appeared to the Board "that sufficient accommodations were not furnished to these citizens to fulfill the requirements of the statutes of this State" (R., 71).

What these supposed statutory requirements were does not appear, either in this record nor, so far as we have been able to discover, in the statutes themselves.

Except in the testimony submitted to the Supreme Court of the State and by it rejected, the company has never been called upon or permitted to make a showing as to the character of the accommodations actually furnished at Latta.

In view of this, it cannot be said that the alleged deficiency of facilities at Latta has been made so clearly apparent as to justify the order in question. Until such deficiency has been made clearly to appear, it is insisted that the order of the State Railroad Commission about to be enforced by the State Supreme Court constitutes an unconstitutional exercise of power and an illegal interference by the State or its Commission with the interstate commerce of the railroad.

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Office Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. [redacted]36.

ATLANTIC COAST LINE RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

BRIEF IN BEHALF OF DEFENDANTS IN ERROR.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 296.

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STATEMENT OF FACTS.

Latta is a town located on the main line of Atlantic Coast Line Railroad, in the County of Marion, South Carolina. Such main line extends from Richmond, Virginia, to Tampa, Florida. Leading back from Latta as

a junctional point in a westerly direction, Atlantic Coast Line owns and operates a branch railroad, lying wholly within the State of South Carolina, twenty-one miles in length, known as the Latta Branch, to the town of Clio, in Marlboro County. Latta is comparatively a small village of approximately one thousand inhabitants, and Clio is not so large. Both are located in a thickly settled agricultural country. The people of Latta and the territory adjacent thereto, of the stations along the Latta Branch and the territory adjacent thereto, and of Clio and its adjacent territory, a minimum distance of twenty-one miles of thickly settled, prosperous and populous country, are wholly dependent upon the passenger accommodations furnished at Latta for ingress and egress from and to the outside world. Hence it would seem clear that Latta, owing to its situation as indicated, though small of itself, is a passenger point of importance, because of the large number of people that have to use the passenger trains there. (Testimony pp. 21-61; also blue prints appendix.)

In November, 1903, J. J. Bethea, Intendant of Latta, wrote to Mr. Emerson, of the Coast Line, requesting better passenger accommodations.

"Our town is progressing rapidly and people are moving in here to get the benefit of the school and church advantages; and others would come, but say the means of getting out and in town by rail is too bad. We want it so we can go South to Charleston, Columbia, or anywhere in that direction and get home without having to lay over. As it is, we can go to Wilmington, N. C., all O. K., but we can't get home when we get off without laying over in Florence or somewhere.

"Please look into this matter at once, as we and the people on the Latta Branch road are at a disadvantage with the adjoining towns, and please let us hear from you at once in regard to this matter, as I must do something." (pp. 21-22.)

It will be noted that nothing was said about stopping any particular trains. The letter was merely a request for better accommodations. Mr. Royall, of the Coast Line, replied to this letter:

"Referring to your letter of the 19th inst., addressed to Mr. H. M. Emerson, which has been referred to me by Mr. J. R. Kenly, our Fourth Vice-President. We have looked very carefully into this matter, and I regret to say that the schedule of our Train No. 32, which has just been arranged for the winter season, will be so fast that it will be impossible for us to make an additional stop between Florence and South Rocky Mount. The schedule is a very fast one, and the train is quite heavy, and we are unable at present to make up any time, and it is with great difficulty that we can hold to the present schedule figures. It would give us pleasure to comply with your request if it was in our power to do so." (p. 22.)

Mr. Royall, it will be observed, endeavors to switch off the issue of furnishing better accommodations on to the fast mail.

Mr. Bethea's reply will also be found at page 22:

"Yours to hand, and in reply will say that all we ask for is better accommodations so we can get here from the South at night. As it is, we have to lay over at Florence or elsewhere. We have always been a very modest people; never asked for a passenger depot and

freight, too, nor have we ever been before the Railroad Commission, but appeal to you. We want it so fixed that we can get in here from Florence at night. We don't ask for fast trains to stop, but we want better accommodations. Let me hear from you at once, etc."

We beg earnestly to call the attention of the court to the fact that in its inception this contention was an effort to obtain better accommodations only to meet local conditions. We shall endeavor to show that the railroad authorities persistently ignored requests of this character, and have sought to nullify local demands upon the railroad as a public servant by insisting that the fulfilling of its primary duty to local territory, necessarily involved the sacrificing of its secondary duty as an interstate carrier, a high-handed proposition not to be considered, thus attempting to set forth its interstate function as an excuse for ignoring local duties, and to set at naught the needs of the citizens of the State that has endowed it with a measure of sovereign rights in acquiring rights of way for its road bed; taking public benefits and denying its reciprocal obligations to the public.

Having failed to get any relief, better accommodations without interfering with the fast trains, the citizens of Latta and along the Latta Branch Railroad, petitioned the Board of Railroad Commissioners to afford the relief they sought by stopping Trains Nos. 32 and 35. (pp. 61-63.) Pursuant to the prayers of these petitions, after having sought, through correspondence with all parties to effect an adjustment (pp. 63-64), the Chairman of the Railroad Commission notified Mr. Royall, General Superintendent, that the Board of Commissioners would

have a hearing at Latta May 18, 1904 (p. 66). For various reasons, the hearing was deferred from time to time, and was not held until July 25, 1904 (p. 70). At the hearing the railroad company was represented by Mr. Royall, General Superintendent, and its learned Division Counsel, Mr. Willcox, and each side made a showing as to its contention in the premises (p. 73). The finding of the Board will be found at page 71, and is

"On petition of the town authorities of the town of Latta and of Clio, and citizens along the Latta Branch Railroad, for the stopping of Trains Nos. 32 and 35 on flag, for receiving and delivering passengers at said station, after personal inspection of the situation at Latta, and the demand of these citizens for these accommodations, it appears to the Board that sufficient accommodation was not furnished to these citizens to fulfill the requirements of the statutes of this State. The evidence was sufficient to warrant this Board in demanding that better accommodation should be furnished, and that it was not unreasonable to ask the said company to stop Trains Nos. 32 and 35 on flag. Therefore it is hereby ordered that said trains shall stop on flag at said Latta station on and after August 1st."

Under the laws of South Carolina (Code 1902, Section 2119), the railroad company had sixty days in which to comply with this order. The company having failed to grant any relief whatever, or to pay any attention to the order of the Railroad Commission, at the request of the Railroad Commission, the Attorney-General on October 14, 1904, instituted an action within the original jurisdiction of the Supreme Court of South Carolina, praying for a writ of mandamus (p. 10). The

action was commenced by the service of a rule to show cause why the prayer of the petition for mandamus should not be granted, directed to the railroad company, which for return interposed a demurrer to the petition (pp. 9-12). The demurrer was based upon five general propositions, which, briefly stated, are:

1. That the Railroad Commission was without power to make the order in question.

2. That the facts upon which such order was based were not judicially determined, and its enforcement would deprive the railroad company as a citizen of its property without due process of law.

3. That the Supreme Court of South Carolina was without jurisdiction in the premises because

(a) No statutory authority is given to hear and determine the issues of fact involved.

(b) A writ of mandamus cannot be used as an original proceeding to try and determine the question of right.

4. That the complaint states that the Railroad Commission had found as a fact that sufficient accommodations did not exist, but failed to allege as a fact that such accommodations did not exist.

5. That whatever might be the powers of the Railroad Commission to require greater conveniences to be given to a certain locality, such power did not embrace the right to control the operation of specific trains.

The Supreme Court of South Carolina overruled the demurrer in detail upon the following grounds (pp. 13-17).

As to 1. Because the court held that the Railroad Commission had the power to determine and make the order under Section 2069, Code S. C., 1902:

"Whenever in the judgment of the Railroad Commissioners it shall appear that repairs are necessary upon any such railroad, or that any addition to the rolling stock or any enlargement of or improvement in the stations or station houses, or any modification in the rates of fare for transporting freight and passengers, or any change in the mode of operating the road and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, they shall give information in writing to the corporation of the improvements and changes which they adjudge to be proper; and, if the said company shall fail within sixty days to adopt the suggestions of said Commissioners, they shall take such legal proceedings as they may deem expedient, and shall have authority to call upon the Attorney-General to institute and conduct such proceedings."

As to 2. Because the facts were determined after due hearing at which the railroad company appeared and made a contest on the merits before a well recognized and generally adopted tribunal; and quotes the language of this court from Louisville and Nashville Railroad Company vs. Schmidt: "It is no longer open to contention that the due process clause of the fourteenth amendment of the Constitution of the United States does not control mere forms of procedure in State courts,

or regulate the practice therein. All requirements are complied with, provided, in the proceedings which are claimed not to have been due process of law, the person condemned has had sufficient notice and adequate opportunity to defend." 177 U. S., 230.

As to 3. (a) Because the Supreme Court was not invoked to hear and determine issues, but to require obedience to an order based on facts already determined by proper authority.

(b) Because mandamus is the usual and proper method specifically provided by statute. Section 2119, Code S. C., 1902, provides:

"If any railroad shall neglect or refuse to comply with the provisions of this chapter, or with the rules and regulations prescribed by said Commissioners within the limit of their authority such company shall be subject to a writ of mandamus, to be issued by any Justice of the Supreme Court, or Circuit Judge, upon application of the Commissioners or a majority of them, to require compliance with said laws or said rules and regulations, and failure to comply with said writ of mandamus shall be punishable as for contempt; and for any wilful violation of any of said laws, or failure to comply with the requirements of said rules and regulations, the court may award such costs and counsel fees on return of said writs and after due deliberations thereon, as may be just."

As to 4. Because the Railroad Commissioners had the power, under Section 2069 above quoted, to determine the facts embraced in their order, and had determined such facts.

As to 5. That under the police power, the Legislature can require all regular trains not engaged in interstate commerce, to stop at certain stations, and that the power to require all, necessarily includes the right to stop a less number or a particular train.

We beg to call the attention of the court to the fact that the Supreme Court of South Carolina, when this decree was filed, had before it the bill of complaint and the demurrer only, and nothing to indicate that Trains Nos. 32 and 35 were possibly interstate trains.

The Railroad Company then made its further return to the rule to show cause by answering generally, and the various defences are so comprehensively embodied in the assignments of error that we deem it unnecessary to set them forth in detail. Upon the filing of the answer and return, the material allegation as to the fact of a hearing having been had at Latta, as set forth in the bill of complaint, having been controverted, his Honor, Mr. Chief Justice Pope of the South Carolina Supreme Court, granted an order of reference directed to F. F. Covington, Esq., to take testimony (p. 20). Various references were held, at which the testimony of a large number of witnesses was taken (pp. 21-118). After hearing full argument upon the facts and the law, the Supreme Court of South Carolina filed its final decree directing that the writ of mandamus issue in the following words:

"This court has reached the conclusion that the writ of mandamus should be issued; but in order that respondent may have the opportunity of discharging its primary duty in the premises without stopping Trains Nos. 32 and 35 on flag, the writ will be so framed as to

confer upon the railroad company the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping Trains Nos. 32 and 35 on flag." (p. 125.)

The railroad company filed a petition, which embodied substantially the same questions as are raised by the appeal to this court for a rehearing; and all proceedings were stayed pending consideration of the petition, which was ultimately refused. The mandamus issued precisely as the court had directed, that is, in the alternative, and the railroad company appealed to this court on the assignments of error set forth in the record. Pending this appeal, the writ of mandamus has been stayed and rendered inoperative by order of supersedeas of his Honor, Mr. Justice Brown, of this court.

ARGUMENT.

The first two assignments of error pertain to the demurrer and are:

First. That the said Supreme Court of South Carolina upon its refusal to sustain the defendant's demurrer to the complaint, denominated petition, filed as an interlocutory decree, dated March 15, 1905, erred in holding that the enforcement by mandamus proceedings of the order of the plaintiff Railroad Commission of the State of South Carolina, attempted to be exercised and enforced under and by virtue of Sections 2069 and 2119 of the Code of Laws of the State of South Carolina of 1902, did not deny to defendant its day in court on the merits of said order of the Railroad Commission, and did not thereby abridge the privileges and immunities of the defendant as a citizen of the United States, and

deprive it of its property without due process of law, and deny to it the equal protection of the laws in violation of Article 14 of the amendments, Section 1, of the Constitution of the United States.

Second. That the said Supreme Court of South Carolina, upon its refusal to sustain the defendant's demurrer to the complaint, denominated petition, filed as an interlocutory decree, dated March 15, 1905, erred in holding that by virtue of Section 2069 of the Code of Laws of South Carolina of 1902, the Railroad Commission of the State of South Carolina had the legislative function, and in addition to the legislative function, the judicial function, and that the enforcement of said order of the Railroad Commission by a mandamus proceeding, which did not afford to the defendant a trial on the question of fact, or the right of inquiry as to the merits of the order; did not deny to defendant its day in court, and did not abridge the privileges and immunities of defendant as a citizen of the United States, and did not deprive it of its property without due process of law, and did not deny to it the equal protection of the laws in violation of Section 1, of Article 14 of the amendments to the Constitution of the United States.

The rule to show cause was returnable November 12, 1904, and the first return of the railroad company was by way of demurrer (p. 11). The Supreme Court of South Carolina filed its decree March 15, 1905. Thereafter the railroad company answered generally, which, as we take it, operated as a waiver of the demurrer.

But, for the sake of argument, conceding that plaintiff in error is not out of court on the demurrer, and answering the assignments of error on their merits as

matter of fact, did the enforcement of the order of the Railroad Commission by mandamus proceedings—

(a) Deny plaintiff in error its day in court on the merits of the order of the Railroad Commission?

(b) Abridge its privileges and immunities as a citizen?

(c) Deprive it of its property without due process of law?

(d) Deny it equal protection of the law in violation of the Constitution of the United States?

As we have seen, Section 2069, Code S. C., 1902, confers upon the Railroad Commission the power in its judgment to settle questions with a view to promoting "the security, convenience and accommodations of the public." The question at issue was the passenger accommodations afforded a large number of citizens, and we fail to perceive how it can be seriously questioned that the Board had no jurisdiction of the subject matter.

(a) As a matter of fact, the Railroad Commission did not deny to plaintiff its day in court. It was notified to appear at the hearing, acknowledged receipt of notice, promised to appear, did appear by Mr. Royall, General Superintendent, and Mr. Willcox, Division Counsel, and contested the issue. (pp. 70-73.)

(b & d) And if it had its day in court and was heard fairly (and there is no complaint that it was not), then we venture to think its privileges and immunities as a citizen, and equal protection of the laws, are neither abridged nor denied.

(c) The regulation of the accommodations afforded the traveling public is a police regulation. Gladson vs. Minnesota, 193 U. S., 53; Mississippi vs. R. R. Co., No.

64, October term, 1906. The due process clause of the fourteenth amendment does not control forms or procedure and regulate practice in State courts. In having notice and in appearing and defending, plaintiff in error had all the rights, privileges and immunities guaranteed under the Constitution. R. R. Co. vs. Schmidt, 177 U. S., 239.

And having vested the Railroad Commission with the power in its judgment to decide the subject matter at issue under Section 2069 of the Code, the Legislature, under Section 2119, has specifically provided how the rules and orders may be enforced, by a writ of mandamus, precisely the practice that defendants in error have followed to the letter in this controversy.

The first half of the second assignment of error complains that the Supreme Court of South Carolina erred in holding that the Railroad Commission had

(a) The legislative function.

(b) The judicial function.

The Supreme Court of South Carolina did not hold that the Railroad Commission had general legislative and judicial functions. What it did hold was that the Legislature of South Carolina, under Section 2069 of the Code, had delegated to the Railroad Commission the power to investigate and decide the question of passenger accommodations furnished citizens of the State by railroad corporations, and to make such orders as they might deem proper "in order to promote the security, convenience and accommodation of the public." It is true that the power to investigate, which carries with it the power to adduce evidence and to hear testimony, and the power to reach conclusions and decide and order

are functions usually delegated to courts, and it is further true that the power to make rules and regulations for the control and government of citizens is a function usually delegated to Legislatures. But in the settlement of many questions of detail arising under the police regulations and in making such settlement effective, we venture to say that most, if not all, of the States in the Union have delegated functions, both judicial and legislative in character, to particular bodies. This court has certainly recognized that a State has the right to constitute bodies to legislate and to judge in matters pertaining to its internal affairs. So long as the results of such legislative action and judicial determination do not conflict with national authority, they are not matters of national concern. And in like manner, so long as the State of South Carolina has clothed an arm of the government of its internal affairs with the power to hear and to judge, with the power to order and to legislate, does it necessarily follow that, because it chooses to denominate such arm of its government a Railroad Commission, instead of by some other name, an attempt by such arm of government to legislate and to judge is in contravention of the Federal Constitution? We submit that mere names and mere forms of procedure in State government, so long as they are fair, are not matters of national concern.

The second half of the second assignment avers that the Supreme Court of South Carolina erred in holding "that the enforcement of said order of the Railroad Commission, which did not afford to the defendant a trial on a question of fact, or the right of inquiry as to the merits of the order, did not deny to defendant its day

in court, and did not abridge the privileges and immunities of defendant as a citizen of the United States, and did not deprive it of its property without due process of law, and did not deny to it the equal protection of the laws." This is an utterly distorted, biased and untrue statement. The Supreme Court of South Carolina held nothing of the kind. On the contrary, it held that defendant had a fair hearing by a legally constituted tribunal. It will be further observed that the question raised by the complaint to which plaintiff in error demurred, alleged one actionable fact, that is, that such an order had been made.

And as to the right of plaintiff in error to inquire into the merits of the order, any such right, if it had existed, was forfeited by the negligence of plaintiff in error. In acknowledging the notice of the order, the written notice required by statute, Mr. Royall, General Superintendent, says (p. 72)):

"I beg to acknowledge receipt of your letter of the 24th instant, enclosing copy of letter of July 29th, which came to me by express, in reference to Trains Nos. 32 and 35 stopping on flag at Latta, S. C. I regret that I have heretofore failed to acknowledge receipt of this letter of July 29th. My information is that the company has sixty days in which to decide the matter. Will you kindly advise me if I am properly informed as to this?"

Mr. Duncan, Secretary of the Commission, replied:

"Replying to your favor of the 30th ultimo, I beg to say that your information is correct, and that your company, under the statutes of this State, has sixty days in which to decide whether you will accept the order of the

Board or not. The object that I had in my last favor addressed to you, was simply to know if you had received this communication. This was the only matter I was responsible for."

We submit that the time to inquire into the merits of an adverse order of this character, by injunction or certiorari, as it might deem advisable, was during the sixty days. The record does not show that it did anything, and, as a matter of fact, it did nothing. It acquiesced in the merits of the finding by inaction, and rested on the right of its might to defy the Railroad Commission. Naturally the next step of the Railroad Commission was a mandamus proceeding.

The third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth assignments of error really go to the pith of this appeal in raising questions in various aspects as to whether the State of South Carolina, through its Railroad Commission and Supreme Court, has interferred in an unwarranted, illegal, and high-handed manner with the rights of plaintiff in error as an interstate carrier of mails and passengers. They are

Third. That the said Supreme Court of South Carolina erred in holding in its final decree of date February 26, 1906, rendered effective April 9, 1906, that the legislative and judicial control by the Railroad Commission and the Supreme Court of the State of South Carolina of defendant's interstate commerce Trains Nos. 32 and 35, by requiring them to stop at the town of Latta, S. C., was not in violation of and in conflict with Section 8, Article 1, of the Constitution of the United States, and the laws of the Congress of the United States enacted thereunder, and was not a direct burden upon interstate

commerce, and was not a direct and unnecessary interference with the right of defendant to perform its obligation as an interstate commerce carrier of passengers, and not a direct and unnecessary interference with the speedy carriage of the mails of the United States.

Fourth. That the said Supreme Court of the State of South Carolina erred in not holding in its said final decree that it was beyond the power of the Railroad Commission and the Supreme Court of the State of South Carolina to subject to local control by their orders defendant's interstate commerce Trains Nos. 32 and 35 in particulars not within the right of mere police regulations, in requiring them to stop at the town of Latta, S. C., and in not holding that such an exercise of power was in violation of Section 8, Article 1, of the Constitution of the United States, and the laws of the Congress of the United States enacted thereunder, and was a direct burden upon interstate commerce, and a direct and unnecessary interference with the right of the defendant to perform its obligations as an interstate commerce carrier of passengers, and was a direct and unnecessary interference with the speedy carriage of the mails of the United States.

Fifth. That the said Supreme Court of the State of South Carolina, erred in holding in its said final decree, inviolation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its rights as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State

of South Carolina by its order and the Supreme Court of South Carolina by its decree, had the right to require interstate commerce Trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate local facilities otherwise were not provided by defendant company, when it appears that the question of providing by the defendant company of adequate local facilities was not the issue in the original petition of the people of Latta to the Railroad Commission, or considered by the Railroad Commission of South Carolina, and could not, therefore, be used as an excuse for the violation of defendant's interstate commerce rights.

Sixth. That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its rights as an interstate carrier of passengers, and as a speedy carrier of United States mails, that the Railroad Commission of the State of South Carolina by its order, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce Trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate local facilities otherwise were not provided by defendant company, when it appears that the question of defendant company's providing adequate local facilities was not before the said Supreme Court, except by way of affirmative defense urged by defendant in its answer on the merits, and when it also appears that the Supreme Court of South Carolina, after appointing its

referee to take the testimony, refused, when this report was made to the court and argued, to consider it, whereas a consideration of and an adjudication upon said testimony would have shown that local accommodations were adequately supplied; and, further, in refusing to consider the fact as to adequate local facilities, violated defendant's rights and immunities as a citizen of the United States, deprived it of its property without due process of law, and denied to it the equal protection of the laws in violation of Section 1, Article 14, of the amendments to the Constitution of the United States.

Seventh. That the Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its rights as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce Trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate local facilities otherwise were not provided by defendant company, when, if this question of adequate local facilities had been contained in the petition of the people of Latta to the Railroad Commission, and had been considered by the Railroad Commission, and had been considered by the Supreme Court of South Carolina, and had become a judicially ascertained fact against defendant's contention, it could not be used

as an excuse for the violation of defendant's interstate commerce rights.

Eighth. That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its rights as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce Trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate local facilities otherwise were not provided by defendant company when it should have held that if the question of the defendant's providing adequate local facilities had been considered by the Supreme Court of South Carolina and decided adversely to defendant, it could only afford the Railroad Commission and the Supreme Court of the State of South Carolina the right to an inquiry directed to that end to require the Railroad Company, defendant, to furnish additional and adequate local facilities, and could not give the right of the Railroad Commission and the Supreme Court of the State of South Carolina to invade the interstate commerce rights of the defendant as an original or alternative proposition, and said court should have held that these local facilities could only be furnished by requiring more trains, and not require the

service by including within its orders the regulation of interstate commerce trains.

Ninth. That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its right as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce Trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate facilities otherwise were not provided by defendant company, and that the local authorities of the State of South Carolina, including the Railroad Commission of the State of South Carolina, and the Supreme Court of the State of South Carolina have the power to regulate and control interstate commerce trains of the character of Trains Nos. 32 and 35 as they are shown to be in this controversy in regards other than mere police regulations.

Tenth. That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, that it is only after all local conditions have been adequately met that railway companies doing an interstate commerce business

have the legal right to adopt special provisions for through traffic.

In the case of Illinois Central R. R. Co. vs. Illinois, 163 U. S., 142, the Supreme Court of Illinois issued a peremptory mandamus to require the Illinois Central Railroad Company to turn aside from its direct main line its South-bound fast mail and also all other passenger trains, and back them three and one-half miles to its passenger station in the city of Cairo. This was done under authority of a State statute which required all regular passenger trains to stop a sufficient length of time at the railroad stations of county seats to receive and let off passengers with safety. It will be observed that without regard to adequacy of passenger accommodations or number of trains, the writ of mandamus required absolutely every train to stop, whether local or interstate trains, irrespective of hours of arrival and departure; and it was impossible to operate a single train for interstate business which would be free of the burden of backing into the Cairo station. The court had no alternative but to hold this a direct burden on interstate commerce.

In Cleveland, C., C. & St. L. R. R. Co. vs. Illinois, 177 U. S., 514, the same statute was under construction with the difference in the facts: that the attempt by mandamus of the Supreme Court of Illinois was to stop a particular train known as the Knickerbocker Special, at the city of Hillsboro, which already had four trains per day each way. There was no question of adequacy of accommodations already furnished, but it was a question

of merely a whimsical attempt to stop a particular train for no other purpose than to make it stop under authority of the statute in question. His Honor, Mr. Justice Brown, who delivered the opinion of the court, tersely summarizes the situation:

"The question broadly presented in this case is this: Whether a State statute is valid which requires every passenger train, regardless of the number of such trains passing each way daily, and of the character of the traffic carried by them, to stop at every county seat through which such trains may pass by day or night, and regardless also of the fact whether another train designated especially for local traffic may stop at the same station within a few minutes before or after the arrival of the train in question.

"The demurrer to the answer admits that the railway company furnished a sufficient number of regular passenger trains (four each way a day) to accommodate all the local and through business along the line of the road, and that all such trains stop at Hillsboro; that none of such trains have been taken off, and all of which ran prior to the putting on of the Knickerbocker Special still run and still stop at Hillsboro, and that they furnish ample and sufficient accommodation to all persons desiring to travel to and from that place * * * "

The court held that this was a needless and direct interference with interstate commerce.

In the case of Illinois Central R. R. Co. vs. Mississippi, 138, Fed. Rep. 327, affirmed by this court December, 1906, No. 64, the question at issue was not a question of adequate accommodations, because the court predicates its opinion upon the hypothesis that adequate

passenger facilities were afforded. The complaint was as to equipment and inconvenient times of departure. In his summary of the principles controlling questions of this character, his Honor, Mr. Justice Peckham, says:

"Upon the principles decided in these cases, a State Railroad Commission has the right, under a State statute, so far as railroads are concerned, to compel a company to stop its trains under the circumstances already referred to, and it may order the stoppage of such trains if the company does not otherwise furnish proper and adequate accommodation to a particular locality, and in such cases the order may embrace a through interstate train actually running, and compel it to stop at a locality named. In such cases, in the absence of congressional legislation covering the subject, there is no illegal or improper interference with the interstate commerce right; but if the company has furnished all such proper and reasonable accommodations to the locality as fairly may be demanded, taking into consideration the fact, if it be one, that the locality is a county seat, and the amount and character of the business done, then any interference with the company (either directly by statute or by a railroad commission acting under authority of a statute) by causing its interstate trains to stop at a particular locality in the State, is an improper and illegal interference with the rights of the railroad company and a violation of the commerce clause of the Constitution."

The court further holds in this opinion that the fact of contracts to transport mails is not conclusive, but is a circumstance to be weighed and considered.

In the case at bar, the specific defence of mail contracts is not plead and is not herein involved. The pleading is to the effect that the trains are engaged in the transportation of mails.

In Lake Shore Co. vs. Ohio, 173, U. S., 285, a statute of the State of Ohio, which required railroad companies operating in Ohio to stop at least three passenger trains each way per day, Sundays excepted, at towns of 3,000 or more inhabitants, for the purpose of receiving and discharging passengers was construed. The result was that interstate commerce trains had to stop. The court said:

"The power of the State by appropriate legislation to provide for the public convenience, stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, and the public safety."

In C., C., C. & St. L. R. R. Co. vs. Illinois, 177, U. S., 514, the court summarizes the holding of the Lake Shore case in these words:

"While, as we held in the Lake Shore case, railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, and who not only have granted to them their franchise, but who may have contributed largely to the construction of the road, they are bound to do more than this, and may then provide special facilities for the accommodation of through traffic."

The Supreme Court of South Carolina in its final decree, which will be found at page 123 of the Record, predicates its opinion on the holding of this court in the Lake Shore case.

Accordingly, we submit the Supreme Court of South Carolina held that the State had jurisdiction through its Railroad Commission, and properly so. We further submit that the Supreme Court of South Carolina was warranted in deducing from the holdings of this court that the primary duty of even an interstate railroad is to its local territory, and the secondary duty is to interstate traffic. To our mind our State has not endowed this corporation with being and with the sovereign right of condemnation of private property to acquire a highway without compensatory obligations to our citizens; endowed it with such being and such right for the pleasure of seeing the citizens of other States and countries ride through our borders with accommodations paramount to those of our own citizens. Our Supreme Court has held in effect: Discharge your primary obligation and you are welcome to your highway for the accommodation of the citizens of our neighbors.

How has plaintiff in error discharged its obligations? What are the facts as applied to the principles of law announced by this court?

In the first place, though the assignments of error proceed on the assumption that the trains in question are interstate commerce trains, we believe this is open to question. It will be seen, testimony p. 102, that these trains are made up in Jersey City and run to Tampa, and vice versa. They are local trains in Florida; stop at a number of local stations in Georgia and at Hardeeville, Ridgeland, Yemassee, Charleston, Lanes, Florence, and Dillon, in South Carolina. Passengers may flag these trains, and are received as passengers within the State, and they are transported to other flag and regular

stops within the State. Which shall we call them, local or interstate in character? Are they not both? And it also appears from the testimony cited, that Trains 39 and 40 run between Jersey City and Jacksonville. If the State of South Carolina cannot require Trains 32 and 35 to stop at Latta, it cannot require Trains 39 and 40 to stop. And then these citizens would have no main line train at all on which to ride to and from the outside world, and the State would be powerless as against its own offspring.

As we understand the holdings of this court, local conditions and facilities have to be provided for, and State authorities, in the absence of Congressional legislation, may require interstate trains to stop to fulfill local requirements of this character. Were local requirements met and adequate facilities furnished?

As we have seen, this entire controversy grew out of a complaint as to adequate passenger accommodations with the express declaration, "We don't ask for fast trains to stop, but we want better accommodations." (p. 22.) The railroad authorities did nothing. The next step was an attack on Trains 32 and 35 in the various petitions to the Railroad Commission to require them to stop. (pp. 62-63.) The Railroad Commission tried, through correspondence, to get the matter peaceably adjusted, and adequate accommodations furnished without success. (pp 64-68.) The next step was the hearing at Latta by the Commission, at which all parties put in a general appearance and contested on the merits. (p. 73.) The Board found three things: *That sufficient accommodations were not furnished; that better accommodations should be furnished, and that it*

was not unreasonable to ask the stopping of Trains 32 *and* 35. (p. 71.) *Upon these findings it ordered the trains to stop. Did the plaintiff in error obey? If it had, we would not have been here today. Did it appeal from these findings to have them reviewed on their merits by injunction or otherwise, as did the Illinois Central in Mississippi? Not at all. What it did was to defy the Railroad Commission? These findings were judicially determined and are fixed, determined and settled. There is no appeal from them before this court, and there is no record produced for this court to declare whether such findings were just or unjust.* Under the allegation of the complaint, this is all we had to prove (p. 10); and it was all the Supreme Court wanted to know in order to make its finding. (p. 35.) The work of taking the testimony, pp. 20-120, was useless, but we were willing to accommodate our friends, and to let them get the situation before the court. And what did the testimony disclose? That Latta has eleven trains arriving and departing per day (p. 101)—a fact from which our learned opponents have derived great comfort. A cursory analysis will show that seven of these are Latta Branch side-line trains leading into the back country and two main line trains each way, 35 and 39 South-bound, and 32 and 40 North-bound. No. 40 arrived at 10:30 a. m., going North, and No. 39 at 7 p. m., going South. The other main line trains, 32 and 35, are the trains involved in this appeal. They do not stop. So of main line service and main line trains, Latta and the twenty-one miles of thickly settled back country are dependent on single once-a-day main line service, which these people in their testimony, pp. 20-94, say they find

intolerable. Indeed, we produced a large number of witnesses who testified that the accommodations were utterly inadequate. Whether a citizen should be allowed to arrive at and depart from his home more than once a day is a matter of opinion. But we do say it is a matter of large significance when the people of a large territory rise to demand their rights as they see them, and with unfaltering tenacity and fortitude cling to their cause through four long years of bitter contest, threading their way over every obstacle that a wealthy and well organized corporation can interpose to this highest and mightiest tribunal of our land, seeking justice.

In opposition to this mass of evidence, with any number of trainmen on the ground familiar with the situation, with accurate data as to sale of tickets and number of passengers, plaintiff in error did not produce a single man from the scene of turmoil or introduce a scintilla of testimony, going to show there were but few passengers, to disprove the demand for more trains. Had their local trainmen been able to testify that local conditions did not demand better service, and had ticket sales been small from the territory in question, we venture the assertion that our opponents would have eagerly produced the evidence. We venture the further assertion that, if they had produced such testimony, they would have proven themselves out of court; and, accordingly, they did not dare.

Instead, they put up, pp. 94-120, the General Passenger Agent, the Traffic Manager, the Superintendent of Transportation, and the Superintendent of the First Division from the general offices in Wilmington—all experts. They did not pretend to know anything about

the local conditions; but, as experts from a theoretical standpoint, expressed the opinions that adequate accommodations were furnished. It is sufficient to say that expert opinion and theory are poor consolation for a citizen when he wants a train.

We do not deem it proper to burden the court with an analysis of the testimony, especially in view of the fact that the facts at issue were determined by a tribunal of competent jurisdiction from which no appeal was taken. These facts, we earnestly believe, would have warranted the Supreme Court of South Carolina in granting a peremptory writ of mandamus as prayed for in the complaint, this being one of the instances in which this court has held that State authority may stop interstate trains.

But the question presented is whether, as a fact, the Supreme Court of South Carolina has unwarrantedly and illegally placed a burden on interstate commerce in contravention of the Constitution. If it had peremptorily required particular trains to stop, the loophole mentioned by this court would have still been open to run additional trains without interference for the accommodation of interstate traffic—just as many as it pleased; and in this way there would have been no direct burden on interstate commerce. But the mandamus reads:

"Now, therefore, that due and speedy justice may be done, you, the defendant, the Atlantic Coast Line Railroad Company, are hereby commanded that you, the said Atlantic Coast Line Railroad Company, do immediately after the receipt of this writ, stop your passenger Trains Nos. 32 and 35 at your station in the town

of Latta, when flagged, for the purpose of receiving and delivering passengers at said station, with the alternative right on your part to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping Trains Nos. 32 and 35 on flag, and that you do pay the costs, etc."

Hence, if these trains have to stop, it is the fault of the plaintiff in error. The mandamus places no burden as a matter of necessity upon them. There is no burden on interstate commerce direct or implied. The plain reading of the mandamus is that plaintiff in error may discharge its duties by affording accommodations to these citizens and running these particular trains as it pleases. Only after failure to exercise its alternative right does it become necessary to stop the alleged interstate commerce trains.

And yet the alternative provision is the complaint of the eleventh and last assignment of error; because, as is claimed, it is undefined; is without warrant of law; is based upon a question not decided by the court, and is without legal quality of being used as a coercive alternative to control interstate commerce rights of the defendant. We submit that it has been judicially determined that inadequate local accommodations were furnished. If we understand the Lake Shore case and the recent Mississippi case, the alternative of not furnishing sufficient accommodations is to stop, as a matter of right, interstate trains. This is precisely the doctrine announced by the Supreme Court of South Carolina; and plaintiff in error may discharge its duties in the premises simply by running more and additional

trains to fulfill local conditions, which would give substantially the same accommodations as Trains 32 and 35. It is true the complaint demands the stopping of specific trains, and the decree of the Supreme Court of South Carolina grants less; but that is no reversible error if the conclusion reached is otherwise sound.

We, therefore, submit that the order of supersedeas heretofore granted by his Honor, Mr. Justice Brown, should be dissolved, and that the decree of the Supreme Court of the State of South Carolina should be affirmed by this honorable court.

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No. 250.

Supreme Court of the United States

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Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 296.

ATLANTIC COAST LINE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

J. H. WHARTON, B. L. CAUGHMAN, AND JOHN H. EARLE, AS RAILROAD COMMISSIONERS OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

BRIEF OF ATLANTIC COAST LINE RAILROAD COMPANY.

ALEXANDER HAMILTON,
GEO. B. ELLIOTT,
F. D. McKENNEY,
Of Counsel.

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F. L. WILLCOX,
HENRY E. DAVIS,
Attorneys for Atlantic Coast Line Railroad Company.

STATEMENT OF CASE.

I.

The Atlantic Coast Line Railroad Company, a corporation created and existing under the laws of the State of Virginia (Answer, printed Transcript of Record, p. 18), operates a through line of railroad from the City of Richmond, Va., to the City of Port Tampa, Fla., making connection at the latter place with the Peninsula and Occidental Steamship Company for Havana, Cuba. From Richmond the line extends on North by

way of the Richmond, Fredericksburg and Potomac, Washington Southern and Pennsylvania Railroads to Jersey City, N. J., to the terminals immediately opposite New York City, thus forming one continuous line of railroad, over twelve hundred miles in length, from New York City *via* Washington to Port Tampa, Fla.

Printed Transcript of Record, pp. 94, 95, 104, 106, 107, 108, 110, 111, 114, 119.

II.

Prior to 1892, the main line ran *via* the Wilmington, Columbia and Augusta Railroad to Wilmington, N. C., thence *via* the Wilmington and Weldon Railroad to Weldon, N. C., and thence on to Richmond, Va. About 1886 it was decided to shorten the distance from New York to Florida, and a charter was accordingly procured to build a line for this purpose. This line began at Contentnea, a station on the Wilmington and Weldon Railroad in North Carolina, and extended to a junction on the Wilmington, Columbia and Augusta Railroad at the Great Pee Dee River in South Carolina. The cut-off thus constructed, known as the Florence Railroad, or "Wilson Short Cut," was one hundred and forty and seven-tenths miles in length, and shortened the distance from New York to Florida by sixty-one and two-tenths miles. In building this short cut the promoters were not endeavoring to construct a line to serve local conditions between Contentnea and Pee Dee Junction, but their sole purpose was to construct a cut-off in order to have a nearer and more direct route from the North and East to Florida and the West Indies. The "Wilson Short Cut" was completed in 1892, and in the winter of 1893 through traffic between the North and East and the South was diverted over it.

Printed Transcript of Record, pp. 107, 108, 119.

III.

Although not constructed to serve local conditions, as was to be expected a number of small towns sprang up on the "Wilson Short Cut," among them Dillon and Latta, situated some six or seven miles apart in the upper part of Marion County, South Carolina.

Printed Transcript of Record, pp. 25, 26, 27, 28, 35, 54, 57, 64, 65, 76, 77, 79.

IV.

Some time after building the "Wilson Short Cut" the Atlantic Coast Line constructed a small, unimportant line, twenty

miles in length from Latta to Clio, a hamlet in Marlboro County, South Carolina. This line, known as the Latta Branch Railroad, serves a purely agricultural community, and has only a few very small stations along its entire length. Short and unimportant as this Latta Branch is, however, a double daily passenger service is maintained over it, affording connection at Latta at least once each day with through trains going to all points North, East, South, and West.

Printed Transcript of Record, pp. 24, 28, 29, 30, 76, 77, 82, 83, 84, 91, 92, and especially 98, 99, 100, 101, 117.

V.

In 1885 or 1886 the Atlantic Coast Line Railroad Company began the operation of a through line of fast mail and passenger trains from Florida points to New York City and the East. At first these trains ran *via* Wilmington, N. C., but in the winter of 1893 they were diverted over the short cut mentioned above, which materially shortened both the distance and time of the run. Owing to the fine winter climate of Florida and the West Indies, and the easy access to these resorts afforded by a direct line of railroad operating luxurious trains running very fast schedules and making close steamship connections at Florida points, an immense tourist travel sprang up from the North and East. So enormous has this business become that whereas in 1886 the Atlantic Coast Line occupied the entire field, now there are two other trunk lines—the Southern and Seaboard—in active competition, each handling its full quota of the traffic. (Printed Transcript of Record, pp. 95, 96.) This high-class tourist travel demands the very best service in every respect, and any road failing to maintain such service promptly declines in patronage. To meet the demands of such travel, and in order to carry the mails for the United States Government from the North and East to Cuba and the West Indies, the Atlantic Coast Line Railroad Company inaugurated two very fast mail and passenger trains running from Port Tampa, Fla., to New York City, known as the Florida and West Indian Limited trains, Nos. 32 (northbound) and 35 (southbound).

Answer, printed Transcript of Record, pp. 18, 19.

Printed Transcript of Record, pp. 94, 95, 105, 106, 107, 108, 109, 110, 115, 116.

VI.

At Port Tampa No. 32 takes a portion of the Cuban mail from the Peninsula and Occidental Steamship Company, and at Jacksonville it takes the other portion of the same mail, which comes through the same steamship company *via* Key West and Miami over the Florida East Coast Railroad. At Washington No. 32 is taken in charge by the Pennsylvania Railroad Company, and is required to leave there at a certain time by that line. Thus its schedule is arbitrarily fixed by conditions beyond the control of the Atlantic Coast Line Railroad Company. (Printed Transcript of Record, pp. 103, 108, 109, 115.) Likewise train No. 35 is controlled by the same factors. (Printed Transcript of Record, pp. 108, 115.)

VII.

In the matter of speed and equipment, the Florida and West Indian Limited trains, Nos. 32 and 35, are among the best in the country, being designed especially for high-class interstate travel. They consist of nine to ten cars, of which six or seven are Pullman, including a dining car, one a mail car, one a baggage and second-class car combined, and one a first-class car. (Printed Transcript of Record, pp. 65, 97). The length of the entire run is twelve hundred miles, and over this they are required to maintain a speed of forty miles per hour. In order to keep up such a high rate of speed, as few stops as possible are made. In southern Georgia and Florida stops are more frequent, caused by the fact that it is in this section that these trains receive or distribute the passengers they carry. In the Carolinas, however, only absolutely essential stops, such as water stops, stops for changing engines, stops for dropping sleepers for connecting lines, etc., are made.

Printed Transcript of Record, pp. 102, 103, 113, 114, 115, 116, 118, 119.

VIII.

Not only does the tourist travel demand fast, high-class trains, but high speed must be maintained in order to comply with the contract with the United States Government to carry the mails from the North and East to Florida and the West Indies. Under the most favorable conditions it is a most difficult matter to make the schedule, but so rigid is the Government with its mail contract, that it requires monthly reports to be made as to any failures to run the trains on time.

Answer, printed Transcript of Record, pp. 18 and 19. Printed Transcript of Record, pp. 65, 68, 95, 96, 106, 116.

IX.

As these two Florida and West Indian Limited trains, Nos. 32 and 35, are designed exclusively for fast mail and interstate tourist travel, they are not adapted for local travel, in view of the fact that they are composed almost entirely of Pullman sleepers with the most limited accommodations for exclusively day passengers. (Printed Transcript of Record, pp. 110, 111, 118, 119.) Not only are they wholly unfit for local travel, but to convert them into local trains would destroy their usefulness and entail great loss on the railroad company, as neither through tourists nor local passengers would patronize them—the first, on account of the low speed, and the second, on account of the extra expense required by the superior class of accommodations furnished by a solid Pullman train.

Printed Transcript of Record, pp. 109, 110, 118.

X.

When the Atlantic Coast Line Railroad Company inaugurated the two fast Florida and West Indian Limited trains, Nos, 32 and 35 mentioned above, it did not thereby annul any of its local trains. (Printed Transcript of Record, p. 111.) On the contrary, about the same time it inaugurated two other heavy through trains operating daily each way from Port Tampa, Fla., to New York City, known as the Atlantic Coast Line Express trains, Nos. 39 and 40. These two trains, Nos. 39 and 40, designed primarily to accommodate both local and interstate travel, make all stops and furnish excellent conveniences for all through travel from any point either to the North or the South. Being designed to accommodate any local travel from State to State, they are amply equipped with a full complement of day coaches, both first and second-class, and Pullman sleepers. In addition, they also carry the mails. In the matter of speed, these two trains run just as fast as Nos. 32 and 35 between stations, but, owing to stops, the time of their run is several hours longer.

Printed Transcript of Record, pp. 30, 76, 77, 81, 84, 87, 90, 92, 97, 111, 116, 118.

XI.

In their passage through South Carolina, trains Nos. 32 and 35 make very few stops, as has been said, and one of the towns they pass without stopping is the little hamlet of Latta, though

they do stop on flag at Dillon, a large town a few miles farther North, and about thirty miles distant from Florence, the last previous stop. (Printed Transcript of Record, pp. 25, 61, 64, 65, 102.) In their movement North and South, *these two trains do not stop at twenty-four towns north of Charleston, S. C., larger than Latta, and over their run south of Richmond, Va., pass eleven junctions beside Latta without stopping.*

Printed Transcript of Record, pp. 101-102.

XII.

On the other hand, the two through express trains, Nos. 39 and 40, operated for the express purpose of accommodating local interstate travel as well as local intrastate travel, make all stops in South Carolina if desired. The northbound train, No. 40, reaches Latta at 10:30 a. m., where connection is made with the train from Clio, thus affording a passenger boarding it at that time a train that takes him, without change, to New York early the next morning. (Printed Transcript of Record, pp. 98 and 111.) Returning, he can leave New York at 9:25 p. m. and reach home the following afternoon on southbound train No. 39, having both going and coming the advantages afforded by Pullman sleepers. (Printed Transcript of Record, pp. 97, 100, 111.) Like facilities are furnished by these trains south of Latta. All parties agree that the accommodations are excellent, the only complaint being that the trains are too slow by reason of having to make the stops.

Printed Transcript of Record, pp. 30, 46, 47, 54, 76, 77, 82, 84, 87, 88, 97, 111, 116, 118.

XIII.

In this condition of affairs, Mr. J. J. Bethea, Intendant of Latta, a mere hamlet containing, according to the last United States Census, only four hundred and fifty-three inhabitants (printed Transcript of Record, p. 101), on November 19, 1903, wrote a letter to Mr. H. M. Emerson, Traffic Manager of the Atlantic Coast Line Railroad Company (printed Transcript of Record, p. 106), of which the following is a copy:

"Latta, S. C., November 19, 1903.

"Mr. H. M. Emerson, Wilmington, N. C.

"Dear Sir: Our town is progressing very rapidly and people are moving in here to get the benefit of the school and church advantages; and others would come, but say the means of get-

ting out and in town by rail is too bad. We want it so we can *go South to Charleston, Columbia, or anywhere in that direction without having to lay over.* As it is, we can go to Wilmington, N. C., all O. K., *but we can't get home when we get off without laying over in Florence, or somewhere.*

"Please look into this matter at once, as we and the people on the Latta Branch road are at a disadvantage with the adjoining towns, and please let me hear from you at once in regard to this matter, as I must do something, etc.

"(Signed) J. J. BETHEA,
"Intendant Town of Latta, S. C.
"[SEAL.]"

(Italics added.) (Printed Transcript of Record, pp. 21, 22.)

To this Mr. W. N. Royall, General Superintendent of the road, replied on the 28th of the same month, informing the people of Latta that after looking into the matter it was found impossible to relieve the situation by stopping train No. 32. (Printed Transcript of Record, p. 22.) On December 10, 1903, Mr. Bethea wrote to Mr. J. R. Kenly, Vice-President and General Manager of the road (printed Transcript of Record, p. 64), saying that all they asked was better accommodations *so that they could get into Latta "at night from the South,"* and denied any desire to have fast trains stop. (See letter at bottom page 22, printed Transcript of Record.) In compliance with these requests of the Intendant of Latta, on January 10, 1904, *the schedule of the Latta Branch train was changed so as to leave Pee Dee Junction after the arrival of trains Nos. 32 and 50*—No. 50 being the local passenger train from Charleston *via* Florence to Wilmington—*which change afforded the people of Latta abundant opportunity to get back home at night from the South, as they had requested.* This ended the first phase of the controversy.

Letter of W. N. Royall, printed Transcript of Record, p. 64.

XIV.

Not satisfied with being furnished an opportunity to get back home at night from the South, as they had requested, and deeming their town of as much importance as its neighbor, Dillon, the people of Latta next began an organized crusade to have the fast mail trains, Nos. 32 and 35, stop at their station, although they had theretofore repudiated such a desire. (Printed Transcript of Record, p. 22.) This opened the second and real

controversy. Accordingly, on February 23, 1904, they forwarded a petition to the Railroad Commission of South Carolina, of which the following is a copy:

"To the Honorable Board of Railroad Commissioners:

"Having made effort with the railroad authorities to stop trains Nos. 32 and 35 without effect, we, the undersigned Town Council and business men of Latta, S. C., hereby petition your honorable Board to make Latta a flag station for said trains for passengers only.

"We will take pleasure in setting forth our reasons for this action at any time that you may suggest, etc."

(Duly signed.)

(Printed Transcript of Record, pp. 61 and 62.)

On March 3, 1904, the Railroad Commission forwarded this petition to Mr. W. N. Royall, General Superintendent, at the same time expressing a hope that the demand was reasonable, and that compliance would be made without any further action. On March 7, 1904, Mr. Royall returned the petition to the Commission with the information that it was impossible to comply with the request, stating the reasons. In this communication it was shown that these two trains, though very heavy, were running a very fast and arbitrary schedule, which it was very difficult to make, and which further stops would render more difficult; that if this request was complied with, other towns like Latta would ask for the same thing, which in the end would practically destroy the trains; that the trains already stopped at Dillon, a few miles away, and that the schedule of the Latta Branch trains had been changed expressly to accommodate these very people. (Printed Transcript of Record, pp. 64-65.) This still did not satisfy Latta, however, so again on May 30, 1904, Mr. Royall wrote Mr. Bethea, giving as an additional reason why trains Nos. 32 and 35 could not be stopped, the fact that the Postoffice Department required the schedule to be made, which would be out of the question with additional stops, but offered to make any change in the schedule of the Latta Branch trains that might be desired to accommodate Latta.

Printed Transcript of Record, p. 68.

XV.

This proposition on the part of the railroad company to arrange a suitable schedule by means of the Latta Branch trains received no notice from the people of Latta, and the next thing they did was to seek legal advice from the Attorney-General of South Carolina. (Printed Transcript of Record, p. 69.) After obtaining the opinion of the Attorney-General, which was

forwarded by the Intendant of Latta to them, the Railroad Commission wrote a letter to Mr. Royall, of which the following is a copy:

"July 18, 1904.

"Mr. W. N. Royall, General Superintendent A. C. L. Railroad, Wilmington, N. C.

"Dear Sir: After receiving your last favor referring to the opinion of the Attorney-General, and also after personal conference with him, we have decided, before taking final action in the matter of the train service rendered the people of Latta, *to make a personal visit to Latta.* Commissioners Wharton and Caughman will leave here on Sunday afternoon, the 24th instant, and go through to Dillon and drive back to Latta by private conveyance so as to be there early Monday morning. We will be glad to have you meet us on that date.

"_____,

"Chairman.

"By order of the Board:

"_____,

"Secretary." (Italics added.)

Mr. Royall replied informing the Commission that he would be present on the day named.

Printed Transcript of Record, pp. 70-71.

XVI.

Accordingly, on July 25, 1906, Messrs. P. A. Willcox, Division Counsel, and W. N. Royall, General Superintendent of the Atlantic Coast Line Railroad Company, met two of the Railroad Commissioners in conference at Latta. (Printed Transcript of Record, p. 73.) Not even the semblance of a trial was held, the conference scarcely having the dignity of an experience meeting. Not only was there no trial held at Latta, *but, as the record shows, the railroad company had only been summoned to meet the Commission in a personal inspection* on the petition of the Latta people; yet the decision of the Commission is based on other petitions, as will appear. (Letter W. N. Royall, printed Transcript Record, p. 69; letter Railroad Commission, printed Transcript of Record, p. 63; testimony Commissioner Wharton, printed Transcript of Record, p. 75.) The result of this conference between a railroad attorney and superintendent on the one side, and two Railroad Commissioners on the other, was an order of which the following is a copy:

"July 29, 1904.

"BOARD OF RAILROAD COMMISSIONERS OF SOUTH CAROLINA,

"*vs.*

"ATLANTIC COAST LINE RAILROAD COMPANY.

"Mr. W. N. Royall, General Superintendent Atlantic Coast Line Railroad, Wilmington, N. C.

"Dear Sir: We beg to hand you herewith the finding and order of this Board in the matter as set forth as follows:

"On petition of the town authorities of the Town of Latta and of Clio, and citizens along the Latta Branch Railroad, for the stopping of trains Nos. 32 and 35 on flag for receiving and delivering passengers at said station. *After personal inspection of the situation at Latta,* and the demand of said citizens for these accommodations, it appears to this Board that sufficient accommodation was not furnished to these citizens to fulfill the requirements of the statutes of this State. The evidence was sufficient to warrant this Board in demanding that better accommodations should be furnished, and that it was not unreasonable to ask the said company to stop trains Nos. 32 and 35 on flag.

"Therefore, it is hereby ordered that said trains shall stop on flag at said Latta Station on and after August 1st.

"_____,

"Chairman.

"_____,

"Secretary."

The decision so rendered was transmitted to the railroad company in the form of a letter, and after giving the matter full consideration the railroad company declined to comply with the *fiat* of the Commission.

Printed Transcript of Record, pp. 71-73.

XVII.

Thereupon the Railroad Commission, through the Attorney-General, brought a suit in the original jurisdiction of the State Supreme Court, to compel the Railroad Company, by means of a writ of mandamus, to stop trains Nos. 32 and 35 at Latta in compliance with the order of the Commission. (Printed Transcript of Record, p. 9.) The complaint erroneously set out that the order of the Commission was passed on the hearing of a petition filed by citizens residing in Latta and along the Latta Branch Railroad, alleging that insufficient accommodations for passengers were furnished at Latta; whereas, the facts were that the only petition before the Railroad Commission—that of

the people of Latta—merely demanded the stopping of trains Nos. 32 and 35 without giving any reason therefor. (Printed Transcript of Record, p. 61.) To this complaint the defendant interposed a demurrer on the ground that it failed to state a cause of action for the reasons, *inter alia,* that the order of the Commission was not the result of a judicially determined fact, and the defendant not having had its day in court on the merits thereof, would be deprived of its property without due process of law should it be enforced, in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States, and that the Railroad Commission, even if it had authority to require accommodations, could not control the operation of specific trains.

Demurrer, printed Transcript of Record, pp. 12-13.

XVIII.

The case was heard before the full court at the October, 1904, term, and on March 15, 1905, a decision was rendered overruling the demurrer, but giving defendant leave to answer.

First opinion of court, printed Transcript of Record, pp. 13 to 17 inclusive; 71 S. C. Reports, p. 130.

XIX.

Taking the view that under the ruling of the court it would have a right to a trial on the merits of the order, the defendant then answered the complaint repeating the legal grounds taken by demurrer, and setting up, *inter alia,* that it had never had a legal hearing on the reasonableness of the order; that sufficient accommodations of all kinds were already furnished at Latta; that trains Nos. 32 and 35 were engaged exclusively in carrying interstate commerce and United States mails from the North and East to Florida and Cuba; that they could not be stopped without impairing their usefulness and cutting off a source of defendant's revenue, and that to compel them to stop at Latta would be not only unreasonable and unnecessary, but a direct burden on interstate commerce in violation of Section 8, of Article 1, of the Constitution of the United States.

Answer, printed Transcript of Record, pp. 17-18-19.

XX.

Taking the opinion of the court to mean that the finding and order of the Railroad Commission was not final and conclusive,

and that it could not be enforced until its reasonableness had been determined by a trial in a regularly constituted court, the Attorney-General of the State appeared before the Supreme Court at its April, 1905, term and moved to have a referee appointed to take the testimony on all the issues involved, and report it to the court. (Order, printed Transcript of Record, p. 20.) F. F. Covington, Esq., the referee appointed under this order, held references at Latta and Clio, S. C., and Wilmington, N. C., and duly reported the testimony taken to the court.

Printed Transcript of Record, pp. 20-75, 75-93, 94-119.

XXI.

The testimony having been reported at the October, 1905, term of the Supreme Court, the matter came on for a second hearing, and after argument the court, April 9, 1906, rendered a final decision to the following effect:

"This Court has reached the conclusion that the writ of mandamus should be issued; but in order that the respondent may have the opportunity of discharging its primary duty in the premises without stopping trains Nos. 32 and 35 on flag, the writ will be so framed as to confer upon the railroad company the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains Nos. 32 and 35 on flag."

(Second opinion, printed Transcript of Record, p. 125.)

Although the testimony was before them, the court refused to consider it, holding that the Railroad Commission was a court empowered by statute to adjudicate the reasonableness of the order, and that its decision was final and conclusive, despite defendant's contention that it would thereby be deprived of its property without due process of law.

Second opinion of court, printed Transcript of Record, p. 123.

XXII.

In this second opinion the court further held that, although trains Nos. 32 and 35 were engaged in interstate commerce, they could be controlled by the State Railroad Commission, and that a writ of mandamus should issue to compel them to stop, whether the reasonableness of the order of the commission had been determined or not.

Second opinion of court, printed Transcript of Record, pp. 123-125.

XXIII.

As has already been stated, the question of sufficient accommodations at Latta was never before the Railroad Commission, but, even if it had been, the court would have found, upon consideration of the testimony, that Latta, with eleven passenger trains a day, had better railroad facilities, both for through and local travel, than towns of much greater importance. (Printed Transcript of Record, pp. 96-100, 101-105, 113.) In addition it would have found, as we have seen, that trains Nos. 32 and 35 were exclusively for interstate passengers and mail; were not suited for local needs; could not be stopped without destroying their value, and could not maintain the schedules required by the Postoffice Department with additional stops.

XXIV.

Both demurrer and answer raised the question that to enforce the order of the Commission without a trial before a court would deprive defendant of its property without due process of law, in violation of Section 1, of Article 14 of the Amendments to the Constitution of the United States, and the answer showed the two trains in question were engaged exclusively in interstate commerce, and claimed exemption from State interference under Section 8, of Article 1, of the Constitution of the United States. As both the decisions of the Supreme Court of South Carolina were against the rights, privileges, and exemptions so claimed, two Federal questions are presented.

XXV.

From the judgments rendered by the Supreme Court of South Carolina in the cause, the case now comes to this court upon writ of error.

ASSIGNMENTS OF ERROR.

FIRST.

That the said Supreme Court of South Carolina, upon its refusal to sustain the defendant's demurrer to the complaint, denominated petition, filed as an interlocutory decree, dated March 15, 1905, erred in holding that the enforcement by mandamus proceedings of the order of the plaintiff, Railroad Commission of the State of South Carolina, attempted to be exercised and enforced under and by virtue of Sections 2069

and 2119 of the Code of Laws of the State of South Carolina of 1902, did not deny to defendant its day in court on the merits of said order of the Railroad Commission, and did not thereby abridge the privileges and immunities of the defendant as a citizen of the United States, and deprive it of its property without due process of law, and deny to it the equal protection of the laws in violation of Article 14 of the Amendments, Section 1, of the Constitution of the United States.

SECOND.

That the said Supreme Court of South Carolina, upon its refusal to sustain the defendant's demurrer to the complaint, denominated petition, filed as an interlocutory decree, dated March 15, 1905, erred in holding that by virtue of Section 2069 of the Code of Laws of South Carolina of 1902, the Railroad Commission of the State of South Carolina had the legislative function, and, in addition to the legislative function, the judicial function, and that the enforcement of said order of the Railroad Commission by a mandamus proceeding, which did not afford to the defendant a trial on the question of fact, or the right of inquiry as to the merits of the order, did not deny to defendant its day in court, and did not abridge the privileges and immunities of defendant as a citizen of the United States, and did not deprive it of its property without due process of law, and did not deny to it the equal protection of the laws in violation of Section 1, of Article 14, of the Amendments to the Constitution of the United States.

THIRD.

That the said Supreme Court of South Carolina erred in holding in its final decree of date, February 26, 1906, rendered effective April 9, 1906, that the legislative and judicial control by the Railroad Commission and the Supreme Court of the State of South Carolina of defendant's interstate commerce trains, Nos. 32 and 35, by requiring them to stop at the Town of Latta, S. C., was not in violation of and in conflict with Section 8, Article 1, of the Constitution of the United States, and the laws of the Congress of the United States enacted thereunder, and was not a direct burden upon interstate commerce, and was not a direct and unnecessary interference with the right of defendant to perform its obligation as an interstate commerce carrier of passengers, and was not a direct and

unnecessary interference with the speedy carriage of the mails of the United States.

FOURTH.

That the said Supreme Court of the State of South Carolina erred in not holding in said final decree that it was beyond the power of the Railroad Commission and the Supreme Court of the State of South Carolina to subject to local control, by their orders, defendant's interstate commerce trains, Nos. 32 and 35, in particulars not within the right of mere police regulations, in requiring them to stop at the Town of Latta, S. C., and in not holding that such an exercise of power was in violation of Section 8, Article 1, of the Constitution of the United States, and the laws of the Congress of the United States enacted thereunder, and was a direct burden upon interstate commerce, and a direct and unnecessary interference with the right of the defendant to perform its obligations as an interstate commerce carrier of passengers, and was a direct and unnecessary interference with the speedy carriage of the mails of the United States.

FIFTH.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its rights as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate local facilities otherwise were not provided by defendant company, when it appears that the question of providing by defendant company of adequate local facilities was not an issue in the original petition of the people of Latta to the Railroad Commission, or considered by the Railroad Commission of South Carolina, and could not, therefore, be used as an excuse for the violation of defendant's interstate commerce rights.

SIXTH.

That the said Supreme Court of the State of South Carolina erred in holding in its final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its right as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate local facilities otherwise were not provided by defendant company, when it appears that the question of defendant company's providing adequate local facilities was not before the said Supreme Court, except by way of affirmative defense urged by defendant in its answer on the merits, and when it also appears that the Supreme Court of South Carolina, after appointing its referee to take the testimony, refused, when this report was made to the court and argued, to consider it, whereas a consideration of and an adjudication upon said testimony would have shown that local accommodations were adequately supplied, and, further, in refusing to consider the fact as to adequate local facilities, violated defendant's rights and immunities as a citizen of the United States, deprived it of its property without due process of law, and denied to it the equal protection of the laws in violation of Section 1, Article 14, of the Amendments to the Constitution of the United States.

SEVENTH.

That the Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its rights as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate

local facilities otherwise were not provided by defendant company, when, if this question of adequate local facilities had been contained in the petition of the people of Latta to the Railroad Commission, and had been considered by the Railroad Commission, and had been considered by the Supreme Court of South Carolina, and had become a judicially ascertained fact against defendant's contention, it could not be used as an excuse for the violation of defendant's interstate commerce rights.

EIGHTH.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its rights as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce trains Nos. 32 and 35 of the defendant company, to stop at Latta, S. C., on the ground that adequate local facilities otherwise were not provided by defendant company, when it should have held that if the question of the defendant's providing adequate local facilities had been considered by the Supreme Court of South Carolina and decided adversely to defendant, it could only afford the Railroad Commission and the Supreme Court of the State of South Carolina the right in an inquiry directed to that end to require the railroad company, defendant, to furnish additional and adequate local facilities, and could not give the right of the Railroad Commission and Supreme Court of the State of South Carolina to invade the interstate commerce rights of the defendant as an original or alternative proposition, and said court should have held that these local facilities could only be furnished by requiring other trains and more trains, and not require the service by including within its orders the regulation of interstate commerce trains.

NINTH.

That the said Supreme Court of the State of South Carolina erred in holding in its final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws

of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its right as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate facilities otherwise were not provided by defendant company, and that the local authorities of the State of South Carolina, including the Railroad Commission of the State of South Carolina, and the Supreme Court of the State of South Carolina, have the power to regulate and control interstate commerce trains of the character of trains Nos. 32 and 35, as they are shown to be in this controversy in regards other than mere police regulations.

TENTH.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, that it is only after all local conditions have been adequately met that railway companies doing an interstate commerce business have the legal right to adopt special provisions for through traffic.

ELEVENTH.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1, of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon interstate commerce and thereby denying to defendant its rights as an interstate commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order, and the Supreme Court of the State of South Carolina by its decree, had the right to require interstate commerce trains Nos. 32 and 35 of the defendant company to stop at Latta, S. C., on the ground that adequate local facilities otherwise were not provided by the defendant company, and that the writ of mandamus should be issued, and issuing same so as to require the defendant to stop its interstate commerce trains Nos. 32 and 35 at Latta, S. C., with the alter-

native provision to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping interstate commerce trains Nos. 32 and 35, said alternative requirement being undefined, and being without warrant of law, is based upon a question not decided by the court, and is without the legal quality of being used as a coercive alternative proposition to control interstate commerce rights of the defendant.

INTRODUCTION TO ARGUMENT.

For the sake of clearness and brevity, we have grouped these assignments of error, and stated in as succinct form as possible the errors they raise, to-wit:

I. Assignments 1, 2, and 6 Relate to Due Process of Law and the Equal Protection of the Laws.

(a) Is the Railroad Commission of South Carolina a court? (Assignment 2.)

(b) Was the hearing before the Railroad Commission due process of law? (Assignments 1 and 2.)

(c) Is the determination by a State Railroad Commission that fast mail and passenger trains engaged wholly in interstate commerce must be stopped at a small town final and conclusive so as to preclude any inquiry by the court in a mandamus proceeding to enforce the order of the Commission into the necessity and reasonableness of such order, or would not the enforcement of the order by the court, without judicially determining its necessity and reasonableness, be a denial of due process of law and the equal protection of the laws? (Assignments 1, 2, and 6.)

II. Assignments 3, 4, 5, 6, 7, 8, 9, 10, and 11, Relate to Control Over Interstate Commerce.

(A) Has a State power and authority to interfere with mail and passenger trains engaged wholly in interstate commerce in other than police matters? (Assignments 4 and 9.)

(B) Even if adequate local facilities are not furnished, has a State power and authority to compel the furnishing of such facilities by requiring fast mail and passenger trains engaged wholly in interstate commerce to make the stops; or is not the extent of State power and authority to compel additional local trains to be furnished? (Assignments 3, 7, and 8.)

(C) The question of providing adequate local facilities not having been an issue in the original petition of the people of

Latta to the Railroad Commission, and not having been considered by such Commission, could the inadequacy of local facilities be used as an excuse to violate the interstate commerce rights of the railroad company? (Assignment 5.)

(D) The question of the railroad company's providing adequate local facilities not being before the Supreme Court of South Carolina, except by way of affirmative defense urged by the defendant railroad company in its answer on the merits, and it appearing that said Supreme Court of South Carolina, after appointing its referee to take the testimony, refused to consider such testimony when a consideration of such testimony would have shown adequate local facilities were provided, could the failure to provide such facilities be made the ground of stopping interstate commerce trains Nos. 32 and 35 at Latta? (Assignment 6.)

(E) Is it only after all local conditions have been met that railroads doing an interstate commerce business have the legal right to adopt special provision for through traffic? (Assignment 10.)

(F) Could the writ of mandamus be framed so as to require trains Nos. 32 and 35 to stop at Latta, with the alternative provision that the duty to provide adequate facilities might be discharged by furnishing facilities substantially the same as those that would be furnished by stopping trains Nos. 32 and 35 when this alternative requirement was undefined, unwarranted, and based upon a question not decided by the court? (Assignment 11.)

Having made this synopsis of the errors raised by the assignments, we shall argue the questions in the order indicated.

It will be observed that, under the assignments of error, two great questions of constitutional law arise, to-wit: due process of law and interstate commerce.

ARGUMENT.

I. DENIAL OF DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS.

(Assignments of error 1, 2, and 6.)

A. Is the Railroad Commission of South Carolina a Court?

(Assignment 2.)

1. Preliminary.

Before answering the complaint, the defendant, now plaintiff in error, as we have seen, interposed a demurrer, the second ground of which was in part as follows:

"In that the order of the Railroad Commission is not the result of a judicially determined fact, and, the defendant not having had its day in court on the merits of said order, the enforcement of the order of the Railroad Commission deprives defendant of its property without due process of law, and violates the constitutional protection to which defendant is entitled * * * under Article XIV, Section 1, of the Constitution of the United States * * * ." (Demurrer, printed Transcript of Record, p. 12.)

In disposing of this ground of demurrer, the Supreme Court of South Carolina used the following language:

"The second ground of demurrer is as follows:
"II. In that the order of the Railroad Commission is not the result of a judicially determined fact, and the defendant not having had its day in court on the merits of said order, the enforcement of the order of the Railroad Commission deprives defendant of its property without due process of law, and violates the constitutional protection to which defendant is entitled under Article I, Section 5, of the Constitution of the State of South Carolina, and under Article XIV, Section 1, of the Constitution of the United States.
"*The facts were determined by a tribunal well recognized and adopted throughout the land.* The defendant was notified, appeared, and contested the facts upon the merits. In the case of *L. & N. R. Co. vs. Schmidt,* 177 U. S., 230, the court uses this language: 'It is no longer open to contention that the due process clause of the Fourteenth Amendment of the Constitution

of the United States does not control mere forms of procedure *in State courts,* or regulate the practice therein. All its requirements are complied with, provided, in the proceedings which are claimed not have been due process of law, the person condemned has had sufficient notice, and *adequate opportunity has been afforded to defend.'"* (Italics added.) First opinion of court, printed Transcript of Record, p. 16.)

At the second hearing the defendant still contended that it was being deprived of its property without due process of law, and asked that the court consider the testimony and determine upon the necessity and reasonableness of the order. This the court refused to do, saying:

"On the former hearing before this court, the respondent interposed a demurrer to the petition which was overruled.

"One of the grounds of demurrer was: 'In that the order of the Railroad Commission is not the result of a judicially determined fact, and the defendant not having had its day in court on the merits of said order, the enforcement of the order of the Railroad Commission deprives the defendant of its property without due process, etc.'

"The court, in disposing of this ground of demurrer, said: 'The facts were determined by a tribunal well recognized and adopted throughout the land. The defendant was notified, appeared and contested the facts upon the merits.'

"As *the facts were judicially determined by a tribunal empowered by statute to make such adjudication, they are not subject to review by this court,* in the absence of allegations charging fraud or other grounds, for setting aside the adjudication." (Italics added.) (Second opinion of court, printed Transcript of Record, p. 123.)

Manifestly, therefore, the Supreme Court of South Carolina has held three things, to-wit: (1) The Railroad Commission is a court; (2), the hearing before the Commission was such a trial as contemplated by the Constitution of the United States; and, (3), that the order of the Commission was final and conclusive, the sole duty of the court being to enforce it, whether reasonable or not. The holding the Commission a court was laid down as the major premise of the syllogism, hence we first determine its falsity.

It will be observed that the South Carolina Supreme Court did not hold the Railroad Commission a court by reason of any

statute of South Carolina, but laid it down as a proposition of law universally recognized irrespective of statute. The language is: "The facts were determined by *a tribunal well recognized and adopted throughout the land.*" (Italics added.) Since the South Carolina Supreme Court has seen fit to place its holding on the broad ground of a principle of universal law, this court is free to approach the question untrammeled by the rule that, in the construction of a State statute, the Supreme Court of such State has the last word. But, even if this were not the case, this court would have the right to say whether the result of a statute, as constructed by a State Supreme Court, deprived a party of his property without due process of law, or denied to him the equal protection of the laws. *Chicago, M. & St. P. R. Co. vs. Minnesota,* 134 U. S., 418 (33 L. ed., 970).

Since the object of our first inquiry is to determine whether or not the Railroad Commission of South Carolina is a court, logically we must first ascertain the functions with which it is endowed by the statute creating it, for, as was said by the court in *Western Union Telegraph Co. vs. Myatt,* 98 Fed Rep., 346, "it can only be a court in respect of matters of a *judicial nature,* and such as are properly incidental thereto." (Italics added.)

For the convenience of the court we have printed the Railroad Commission law of South Carolina in Appendix A of this Brief, and shall refer to it from time to time in discussing this phase of the question.

Section 2067 gives the Commission general supervision of all railroads, express and telegraph lines within the State, with the right to examine the same "as to their condition and the manner in which they are operated with reference to the security and accommodation of the public and the compliance of the several corporations with the provisions of their characters and the laws of the State."

Section 2068 provides, in substance, that if a railroad fails in any particular to comply with the laws of the State, especially in regard to connections, rates, and schedules, the Commission shall give notice thereof, and in case of continued violation, shall compel performance by an injunction or writ of mandamus, to be issued by the Circuit Court.

By Section 2069 they are given authority to require repairs upon railroads, additions to rolling stock, enlargements or improvements in stations or station houses, modifications in the rates of fare for transporting freight and passengers, and changes in the mode of operating roads and conducting their

business, if they deem these things "reasonable and expedient in order to promote the security, convenience and accommodation of the public"; the railroad company to have sixty (60) days in which to obey, after which the Commission may call upon the Attorney-General to institute proceedings to compel performance.

Section 2070 authorizes them to investigate certain complaints after giving written notice to the railroad, and if upon *examination* they think the complaint is well founded, they shall so adjudge and inform the railroad, which has sixty (60) days to comply, or else be subject to suit to be conducted by the Attorney-General.

By Section 2076 they are given general supervision over all contracts between railroads doing business in the State as to rates of freight and passenger tariffs.

Section 2077 provides that in making any examination they shall have power to issue subpoenas for the attendance of witnesses, and in case any person wilfully fails or refuses to obey such subpoenas, his attendance may be compelled by a Judge of the Circuit Court, who shall have power to atttach him for contempt.

Section 2082 gives them authority to investigate the books of railroad companies, to examine offices, stations, and other places of business, also agents and employees, to procure information for making rates. It further delegates full power to make freight and passenger rates, with the right to procure the attendance of witnesses and the production of evidence.

Sections 2092 and 2093 further prescribe their powers to make rates.

Section 2094 gives them authority to fix the charges for storage of freights.

By Section 2119 it is provided that if any railroad company shall neglect or refuse to comply with the rules and regulations prescribed by the Commissioners "within the limits of their authority, such company shall be subject to a writ of *mandamus*, to be issued by any Justice of the Supreme Court or Circuit Judge, upon the application of the Commissioners."

This analysis of the functions of the Commission, as set forth in the statute creating it, when tested by well-established rules of law, will conclusively determine whether it is a court.

2. The Commission Exercises Administrative and Legislative Functions.

Broadly speaking, the Commission exercises a general supervisory power over all railroads doing business in the State, especially with reference to their roads, stations, rolling stock, appliances, rates for transporting freight and passengers, traffic contracts with each other, and schedules. In so far as this supervisory authority is applied in carrying out the laws already enacted, their duties are purely administrative or ministerial. Of this there can be no doubt.

Under Sections 2069, 2082, 2092, and 2094 (Appendix A), however, the Commissioners are not merely authorized to see that the existing laws are carried out, but are expressly empowered to fix tariffs of rates, to require repairs, additions to rolling stock, improvements in stations, and to make changes in the mode of operating roads and conducting their business. This power cannot be either administrative or judicial, for it is the power to prescribe what shall be done by railroads in future. This power to enact what shall be done or not done by railroads is, of necessity, legislative.

That this is a legislative and not a judicial function is abundantly established by the authorities. Thus in *Interstate Commerce Commission vs. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479, 499 (42 L. ed., 253), it is said:

"It is one thing to inquire whether the rates which have been charged and collected are reasonable,—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future,—that is a legislative act."

Speaking of the authority of a court to prescribe the facilities and the rates therefor to be furnished by a Railroad Company to an express company using its lines, this court, in the *Express Cases*, 117 U. S., 1, 29 (29 L. ed., 803), has this to say:

"The regulation of matters of this kind is legislative in its character, not judicial. To what extent it must come, if it comes at all, from Congress, and to what extent it may come from the States, are questions we do not now undertake to decide; but that it must come, when it does come, from some source of legislative power, we do not doubt. The Legislature may impose a duty, and when imposed, it will, if necessary, be enforced by the courts; but, unless a duty has been created,

either by usage or by contract, or by statute, the courts cannot be called on to give it effect."

So in *Chicago & G. T. R. Co. vs. Wellman*, 143 U. S., 339 (36 L. ed., 179), it is said:

"The Legislature has power to fix rates, and the extent of judicial interference is protection against unreasonable rates."

Again, in *Reagan vs. Farmers Loan & Trust Company*, 154 U. S., 362, 397 (38 L. ed., 1023), this court says:

"It is doubtless true, as a general proposition, that the formation of a tariff of charges for the transportation by a common carrier of persons or property is a legislative or administrative rather than a judicial function."

The following very clear statement of the law is taken from the able and exhaustive opinion of Judge Hook in *Western Union Telegraph Company vs. Myatt*, 98 Fed., 335, 341:

"The exercise by a State of the power to regulate the conduct of a business affected with a public interest, and to fix and determine, as a rule for future observance, the rates and charges for services rendered is wholly a legislative or administrative function. The Legislature may, in the first instance, prescribe such regulations and fix definitely the tariff of rates and charges; or it may lawfully delegate the exercise of such powers, and frequently does, in matters of detail, to some administrative board or body of its own creation. The establishment of Warehouse Commissions, Boards of Railroad Commissioners, and the powers usually committed to them, are familiar instances of the delegation of such powers. But by whatever name such boards or bodies may be called, or by what authority they may be established or created, or however they may proceed in the performance of their duties, they are in respect of the exercise of the powers mentioned, engaged in the exercise of legislative or administrative functions as important in their character as any that are committed to the legislative branch of the government on the subject of property and property rights. *In prescribing regulations or rules of action under the police power of the State for the safety and convenience of the public, or in determining a schedule of rates and charges for services to be rendered,* they are in no sense performing judicial functions, nor are they in any respect judicial tribunals. The distinction between legislative and judicial

functions is a vital one, and it is not subject to alteration or change either by legislative act or by judicial decree, for such distinction inheres in the Constitution itself, and is as much a part of it as though it were definitely defined therein. When the Legislature has once acted, either by itself or through some supplemental and subordinate board or body, and has prescribed a tariff of rates and charges, then whether its action is violative of some constitutional safeguard or limitation is a judicial question, the determination of which involves the exercise of judicial functions. The question is then beyond the province of legislative jurisdiction." (Italics added.)

The following additional authorities support the rule:

Munn vs. Illinois, 94 U. S., 113 (24 L. ed., 77).
Chicago, B. & Q. R. Co. vs. Iowa, 94 U. S., 155, 183 (24 L. ed., 94).
Peik vs. Chicago & Northwestern R. Co., 94 U. S., 164 (24 L. ed., 97).
Railroad Commission Cases, 116 U. S., 307 (29 L. ed., 636).
Dow vs. Beidelman, 125 U. S., 680 (31 L. ed., 841).
Chicago, M. & St. P. R. Co. vs. Minnesota, 134 U. S., 418 (33 L. ed., 970).
Budd vs. New York, 143 U. S., 517 (36 L. ed., 247).
St. Louis & S. F. R. Co. vs. Gill, 156 U. S., 649 (39 L. ed., 567).
Cincinnati, N. O. & T. P. R. Co. vs. Interstate Commerce Commission, 162 U. S., 184 (40 L. ed., 935).
Texas & Pacific Ry. Co. vs. Interstate Commerce Commission, 162 U. S., 197 (40 L. ed., 940).
Covington & L. Turnpike Road Co. vs. Sandford, 164 U. S., 578 (41 L. ed., 560).
Lake Shore & M. S. R. Co. vs. Smith, 173 U. S., 684 (43 L. ed., 858).
Chicago & N. W. Ry. Co. vs. Dey, 35 Fed. Rep., 866.
Mercantile Trust Co. vs. Texas & P. R. Co., 51 Fed Rep., 529.

In the light of these authorities further argument is unnecessary to show that the Railroad Commission of South Carolina is empowered to exercise administrative and legislative functions; hence we next inquire if it also possesses judicial powers.

3. Does the Railroad Commission of South Carolina Exercise Judicial Functions?

Looking again to the statute creating it in order to ascertain its powers, we now examine the matters of a judicial nature entrusted to the Railroad Commission. Section 2070 (Appendix A) empowers them to make an *examination* of the condition and operation of a railroad upon complaint made, of which examination they shall give the railroad notice.

Section 2077 (Appendix A) authorizes them to subpoena witnesses to attend their *examination* or investigations, but this can only be enforced by the Circuit Court, the Commission having no authority to attach a witness for contempt for failing to attend. *Nowhere is authority given them to compel attendance of witnesses on behalf of a party defendant before them,* Section 2070 only requiring that reasonable notice of the *examination* be given to the defendant railroad; so that any hearing before them must necessarily be a one-sided affair. Not only is this true, but no authority is given them directly to enforce any of their orders, resort having always to be had to a writ of injunction or mandamus to be issued by the Circuit or Supreme Courts in a suit instituted by the Attorney-General, in which the Commission comes into court as party plaintiff. (Sections 2068, 2069, 2070, 2076, 2119, as set out in Appendix A.) Neither are pleadings or trial according to the forms of law provided for in any part of the statute. These being the powers of the commission, can it be legally or properly called a court? The power to make an examination is judicial, as is the power to subpoena a witness; but it must be a court of very limited authority that can neither attach a witness for contempt nor enforce its order without resort to another tribunal.

That a body having such limited judicial powers, in addition to legislative and administrative powers, is in no sense a court is well established by the authorities. What it takes to make a court is thus stated by Blackstone at page 25 of the third volume of his *Commentaries*:

"In every court there must be at least three constituent parts, the *actor, reus,* and *judex*: the *actor,* or plaintiff, who complains of an injury; the *reus,* or defendant, who is called upon to make satisfaction for it; and the *judex,* or judicial power, which is to examine the truth of the fact, to determine the law arising

upon that fact, and, if any injury appears to have been done, to ascertain and by its officers to apply the remedy."

In *State ex. Rel. Richland Co. vs. Columbia,* 17 S. C., 82, it is said:

"There is necessarily involved in the idea of a court that of a tribunal empowered to hear and determine issues between parties, upon pleadings, either oral or written, and upon evidence to be adduced under well-defined and established rules, according to settled principles of law."

So in *McKnight vs. James,* 155 U. S., 685, 687 (39 L. ed., 311), this court holds that a Judge at Chambers is not a court in the sense of the Federal Statutes, saying:

"As, under Revised Statutes, Section 709, a writ of error will go from this court only to a final judgment of the highest court of the State in which a decision in the suit can be had, it is evident that our jurisdiction in this case cannot be sustained, unless an order of a judge at chambers, remanding a prisoner in a *habeas corpus* proceeding, can be regarded as an order of a 'court' within the meaning of this section.

"We held, however, in *Carper vs. Fitzgerald,* 121 U. S., 87 (30: 822), that an appeal did not lie to this court from an order of a Circuit Judge of the United States, sitting as a judge and not as a court, discharging a prisoner brought before him on a writ of *habeas corpus,* for the reason that the Act of March 1, 1885 (23 Stat. at L., 437) gave an appeal to this court in *habeas corpus* cases only from the final decision of a Circuit Court; and that Rule 34 did not make his decision as a judge a decision of the court, the purpose of that rule being to regulate appeals to the Circuit Court from the final decision of any court, justice, or judge inferior to that court, as well as appeals from the final decision of such Circuit Court to the Supreme Court. As a writ of error from this court can only go to the highest court of a State, it follows by analogy that it will not lie to review the order of a judge at chambers.

In the case of *Gurnee vs. Brunswick,* Vol II, Federal Cases, No. 5872, Chief Justice Waite decided that a "Board of Supervisors," created by the laws of the State of Virginia and empowered to pass on and allow claims, was not a court, although certain accounts and claims were presented to them, considered and disallowed, the Attorney-General of the commonwealth representing the county in that proceeding.

The contention was pressed that the proceeding was a suit before a State court. In answer to this, Chief Justice Waite discussed the elements essential to constitute a court as well as a suit.

Amongst other things he said:

"In the *Sewing Machine Cases,* 18 Wall. (85 U. S.) 585, a suit was defined to be 'any proceeding in a court of justice in which a plaintiff pursues his remedy to recover a right or claim.' The board are the representatives of the people elected to supervise the business of the county which has been, by law, committed to their care. They constitute a branch of the executive department of the government, not of the judiciary. A part of their duties is to 'examine, settle and allow accounts chargeable against the county, and, when settled, to issue warrants and levy taxes for the payment. They are the officers charged by law with the duty of auditing claims. Demand of payment must be made on them, they alone represent the county for the purpose. When an account is presented to them it is for allowance, not for adjudication. In settling and allowing they do not act judicially. They simply recognize the claim as valid against the county, and allow it or they reject it. They render no judgment and issue no execution. Their duty is to direct payment of the accounts by the proper officer, and to provide him with the necessary means for that purpose by taxation. When they have made their allowance the account has become liquidated, and may be sued without further demand. All these duties are purely administrative, and the proceeding by which their performance is enforced partakes in no respect whatever of the character of a suit. There are no parties save the claimant and the board; the board occupy one side and the claimant the other. It is true the attorney for the commonwealth is required to represent the county and resist improper allowances, but in this he appears rather as the legal adviser of the board than as the manager of the cause of a litigant. Apply another test. The Act of Congress provides for the removal, under certain circumstances, of any suit of a civil nature, at law or in equity, pending in any State court. If the board were a court and the proceeding before them a suit, the case could have been removed while pending before the appeal. But the right of such removal, we think, will hardly be claimed, for the obvious reason that the relief asked of the board is administrative only and not judicial. They were asked to pay, not to enforce payment. If however, the board disallow the claim and refuse to provide for its payment, judicial action becomes necessary. For this an appeal is given to the courts—not an

appeal from one court to another, but to a court from the executive. By the appeal a suit is commenced and thereafter the proceeding is judicial."

From the foregoing passage it is clear that Chief Justice Waite was of the opinion that to constitute a court there must be a claimant and a defendant; in other words, parties; that there must be a judge acting judicially; that there must be a suit or "proceeding in a court of justice in which a plaintiff pursues his remedy to recover a right or claim," to use the language of this court in the case of the *Sewing Machine Companies*, 18 Wall, 553, 585 (21 L. ed., 922).

A court is an instrumentality of government. It is a creation of the law, and in some respects it is an imaginary thing that exists only in legal contemplation. A time when, place where, and the persons by whom judicial functions are to be exercised are essential to complete the idea of a court. It is its organized aspect, with all these constituent elements of time, place, and officers, that completes the idea of a court in the general legal acceptation of the term.

White County Com'rs vs. Gwin, 36 N. E., 237, 136 Ind., 562.

Courts are the only agencies of the law by which a cause can be heard and determined. They are the only depositaries of judicial power. Without them it lies dormant and inactive in the sovereignty of the State. Its active and potent existence is separate from that of a court. To constitute a court, the judge or judges must be in the discharge of judicial duties at the time and in the place prescribed by law for the sitting of the court. The proceedings of a court at a time and place other than that prescribed by law, are void. It is not the act of a court at all.

Johnson vs. Hunter, 50 W. Va., 52, 40 S. E., 448, citing numerous cases.

A preliminary examination before a United States Commissioner is not a proceeding "in any court of the United States" within the meaning of the Federal Statutes.

Todd vs. United States, 157 U. S., 278 (39 L. ed., 982).

Mr. Justice Brewer, in delivering the opinion of the court in the last above mentioned case, quotes, with approval, the following language of Mr. Justice Story:

"A court is not a judge, nor a judge a court. A judge is a public officer, who, by virtue of his office, is clothed with judicial authorities. A court is defined to be a place in which jus-

tice is judicially administered. It is the exercise of judicial power by the proper officer or officers at a time and place appointed by law."

In the case of *Upshur County vs. Rich,* 135 U. S., p. 467 (34 L. ed., 196), Mr. Justice Bradley reviewed all the decisions and deduced the following as the result:

"The principle to be deduced from these cases is that a proceeding, not in a court of justice, but carried on by executive officers in the exercise of their proper functions, as in the valuation of property for the just distribution of taxes or assessments, is purely administrative in its character, and cannot in any just sense be called a suit; and that an appeal in such a case to a board of assessors or commissioners having no judicial powers, and only authorized to determine questions of quality, proportion, and value, is not a suit; but that such an appeal may become a suit if made to a court or tribunal having power to determine questions of law and fact, either with or without a jury, and there are parties litigant to contest the case on the one side and the other."

In *Fuller vs. County of Colfax,* 14 Fed. Rep., 177, 178, the court uses the following language:

"Now, what is usually understood by the words 'court' and 'suit,' where we find them in legislative enactments or in legal proceedings? Blackstone says that a 'court is a place wherein justice is judicially administered.' To administer justice judicially there must be a judge, and usually, though not always, there are also other officers, such as clerk and sheriff or marshal. That also implies the right to issue compulsory process to bring parties before the court so that jurisdiction may be acquired over the person or property which forms the subject-matter of the controversy. To administer justice judicially, two parties to a controversy must exist; there must be a wrong done or threatened, or a right withheld before the court can act. Then a hearing or trial follows, and the 'justice to be judicially administered' results in a formal judgment for one of the parties to the controversy. The judgment to be pronounced usually has full binding force, unless modified or reversed. The courts can issue the proper process to carry their judgments into effect, and in that way subserve the great ends of their creation. But this is not so with the county boards in this State. They are not clothed with the necessary power to issue compulsory process to bring parties litigant before them. They cannot, in cases like the one under consideration, issue process to compel

the attendance of witnesses. They cannot and do not enter formal judgments in cases presented to them for their consideration. They have no authority to execute any judgments if they should thoughtlessly undertake to enter them. They have not one party before them on whom their orders can operate. In short, the county board is so totally unlike a court, and so different in its constitution and its objects, that I am unable to see any similarity between them.

"If the county board cannot be regarded as a court, it will follow as a necessary consequence that no suit was pending in this case until the appeal from the order of the board was filed and docketed in the district court. Two parties to a suit seem to be almost indispensable: one who seeks redress, and the other who commits a wrong or withholds what is justly due another. The parties must stand in such relation to each other that the machinery of the court will operate on them when their powers and their aid are invoked. No such condition of things existed so long as this claim remained before the county board. But when the appeal was taken and docketed in the district court, we then, for the first time, find a suit pending in the court where none of the elements of either are wanting. It is such a suit that it can be removed from such a court as the removal Acts of Congress contemplate."

So, speaking of the Interstate Commerce Commission in *Kentucky & I. Bridge Co. vs. Louisville & N. R. Co.*, 37 Fed., 567, 612, the court has this to say:

"But does the interstate commerce law undertake either to create an 'inferior court' or to invest the Commission appointed thereunder with judicial functions? We think not. While the Commission possesses and exercises certain powers and functions resembling those conferred upon and exercised by regular courts, it is wanting in several essential constituents of a court. Its action or conclusion upon matters of complaint brought before it for investigation, and which the Act designates as the 'recommendation' of the board, is neither final nor conclusive; nor is the Commission invested with any authority to enforce its decision or award. Without reviewing in detail the provisions of the law, we are clearly of the opinion that the Commission is invested with only administrative powers of supervision and investigation, which fall far short of making the board a court, or its action judicial, in the proper sense of the term. The Commission hears, investigates, and reports upon complaints made before it, involving alleged violations of or omission of duty under the Act; but subsequent judicial proceedings are contemplated and provided for, as the remedy for

the enforcement, either by itself or the party interested, of its order or report in all cases where the party complained of or against whom its decision is rendered does not yield voluntary obedience thereto."

The precise point came before the court in *Western Union Telegraph Co. vs. Myatt,* 98 Fed. Rep., 335, and after a most exhaustive consideration of the authorities, the court reached the conclusion that the court of visitation of Kansas was not a court.

This case is so peculiarly in point that we quote from it at length at pp. 344-345-346:

"What, then, is the nature of the powers conferred upon the court of visitation? It is apparent, from even a cursory examination of those parts of the Act of the Legislature which define the primary powers and jurisdiction of that body, that they are largely of a legislative or administrative character, and such as do not pertain to the functions of a court. It is difficult to define the precise difference between those that are legislative and those that are administrative. It is unnecessary, however, to do so in this case, for it is immaterial whether the powers of that court, so called, aside from those that are judicial, are of the one character or of the other, or are a blending of both. A court does not (to use the language of the Act) 'classify freight' nor 'require the construction and maintenance of depots, switches, sidetracks, stock yards, cars, and other facilities for the public convenience,' nor 'regulate crossings and intersections of railroads,' nor 'regulate the operation of trains' over such crossings and intersections, nor 'prescribe rules concerning the movements of trains to secure the safety of employees and the public,' nor 'require the use of improved appliances and methods to avoid accidents and injuries to persons,' nor 'apportion transportation charges among connecting carriers,' nor 'regulate charges for part carload and mixed carload lots of freight, including live stock,' nor 'prescribe what rates of transportation of freight and passengers shall be charged.' The regulation of such matters is legislative in its character, not judicial. *The Express Cases, supra.* Of course, courts of chancery, in the exercise of their equity jurisdiction, may, and frequently do, through the medium of receivers appointed by them, exercise some of such powers in the administration of property which is the subject-matter of litigation in such courts, and especially where, in order to preserve the value of such property while it is in the possession of the court, it is necessary to continue the operation thereof and maintain it as a going concern. But it is not in such sense that these powers were conferred

upon the court of visitation. Courts also have the undoubted power to determine some of these matters, if they properly lie in the road to the ultimate adjudication of other existing controversies concerning which the adjudication of the court has been invoked; as, by way of illustration, where, in litigation over the destruction of life or property in a railroad accident, it becomes material to ascertain whether the company used proper appliances and methods to avoid such an occurrence. Nor is it to this end that the powers mentioned were conferred upon the court of visitation. The exercise of the powers granted contemplates the prescribing of rules and regulations for future guidance, and the possession of such powers by the court of visitation makes it one of the potential agencies of the legislative department of the State. To use the expression of a learned Justice of the Supreme Court, the court of visitation, in respect of such functions, is 'an active, seeking, supervising body; the eye and the activity of the State.' As to such powers and duties the court of visitation is not, and cannot be a court. Practically all of the powers then possessed by the Board of Railroad Commissioners of Kansas, which was purely an administrative body, were conferred upon the court of visitation, and as an evidence of the legislative purpose and intent, the then existing laws relating to the appointment, powers, and duties of the Board of Railroad Commissioners were, by Act of the Legislature, repealed a few days after the passage of the Act creating the court of visitation. Both Acts were passed at the same legislative session; the latter, by its terms, taking effect March 15, 1899, and the repealing Act, by its terms, taking effect the first Monday of April of the same year.

"It was argued at the bar, on behalf of the defendants, that the powers conferred upon the court of visitation are judicial in their character, for the reason that the law contemplates an investigation and consideration on the part of the court before final action is had; and it is particularly recalled that such contention was made with reference to paragraphs 8 and 9, of Section 8, of the Act, which authorize the court of visitation to 'prescribe rules concerning the movements of trains to secure the safety of employes and the public, and to require the use of improved appliances and methods to avoid accidents and injuries to persons.' Investigation as a precedent to action is not exclusively an attribute of a judicial proceeding. Counsel confounds the usual legislative inquiry which precedes the passage of laws with the judicial consideration of a controversy in a court of justice. It certainly would not be claimed that the hearing and consideration by committees of legislative bodies of the views and opinions of men having special knowledge of matters to be affected by proposed legislation constitute in any

sense the exercise of judicial functions, or that such committees are judicial tribunals. Nor does it follow that, because the exercise of the powers conferred upon the court of visitation requires the use of judgment and discretion, such powers are judicial in their nature, as that would make every executive act and legislative act requiring judgment and discretion a judicial act. To use the language of the Supreme Court of Kansas in *The Auditor vs. Railroad Co.*, 6 Kan., 509:

" 'It certainly could not be so in the sense in which our Constitution uses the term, or it would, of necessity, obliterate the lines by which the framers of that instrument sought to keep separate and distinct the three branches of our government.'

"As was said in *Re Huron*, 58 Kan., 156, 48 Pac., 576, 36 L. R. A., 824:

" 'Not every one who hears testimony and exercises discretion and judgment in a matter submitted to him is necessarily a judicial officer.'

"Counsel say:

" 'The decision of a question which may arise between different railroad companies as to how much a certain charge each shall have is as much a judicial function as to decide how much of an estate each of the heirs shall receive.'

"That may be true where there is such a controversy pending in a court between the railroad companies themselves, but that is not the sense in which the power is conferred upon the court of visitation. The intent of the Act of the Legislature was not to authorize the adjudication of distinct controversies of that character between contending railroad companies, but, instead thereof, the laying down of a rule in behalf of the State and the public, and the securing of the future obedience thereto by the imposition of fine and imprisonment. Is not that process legislation, and is not the result a regulation or a law?

"The fact that the Legislature denominated the tribunal a court is not conclusive as to its true character, nor as to the nature of the jurisdiction and powers conferred upon it. That question is not determined by the terminology employed in the Act, although the legislative purpose and intent may be evidenced thereby, but it is determined rather by the ascertainment of the essential nature of the jurisdiction and powers themselves. The Constitution of the State of Kansas authorizes the creation of courts inferior to the Supreme Court by Act of the Legislature, and, by necessary implication, the defining of the jurisdiction of the courts so created. Article 3, Paragraph 1. Nevertheless, such jurisdiction must, in all essential particulars, be judicial in its character, and the constitutional authority for other courts than those specifically named in the Constitution must be so construed and limited. Under

the Constitution the Legislature may not create a court for the exercise of its own legislative functions, or for the performance of purely administrative or executive duties; and though a tribunal, as constituted by legislative Act, may be denominated a court, may possess a seal, and be clothed with the usual and customary vesture of a judicial tribunal, yet its real character is determined by its jurisdiction and the functions it is empowered to exercise. The Legislature may create a court of visitation, but it can only be a court in respect to matters of a judicial nature, and such as are properly incidental thereto."

In *August Busch & Co. vs. Webb,* 122 Fed., 655, it was held that the Commissioners' Court of a county in Texas, in declaring and publishing the result of an election, acts ministerially and is not a court within the meaning of Revised Statutes, Section 720. On page 665 the court said:

"The contention of the defendants that the Commissioners' Court of Grayson County is a court within the meaning of the law, and that their action cannot be restrained by an injunction, as contemplated by Section 720 of the Statutes of the United States (U. S. Comp. St. 1901, p. 581), to my mind, is without merit. The duty of said body to declare the result of said election and to publish such result is purely ministerial and in no wise judicial. It is true that many duties of a court proper are mi[illegible]erial, but they are clothed with judicial functions, such as deciding litigated questions between litigants, etc. The Commissioners' Court is not a court, in my opinion, within the meaning of said Article 720 of the Revised Statutes, and, therefore, this contention cannot be sustained."

In the case of *Louisville & Nashville R. R. Co. vs. Brown,* 123 F. R., 946, an injunction was granted against the Florida Railroad Commission. The point was made that this was an injunction against a State court. Dealing with this point Judge Pardee said:

"The main contention of the respondents is: that as the legislative Act which creates and defines the powers and authority of the Railroad Commission, vests in said Commission 'judicial powers to do or enforce or perform any function, duty, or power conferred upon them by the Act to the exercise of which judicial power is necessary,' the said Commission, in performing the various powers and duties vested in the Commissioners by the Act, is a State court, within the meaning of Section 720 of the Revised Statutes of the United States (U. S. Comp. St. 1901,

p. 581), which prohibits any court of the United States from issuing an injunction restraining proceedings in any court of a State. An inspection of the Act of the Legislature of the State of Florida creating the Railroad Commission shows that, as is usual in such cases, the Commission is vested with executive, legislative and quasi-judicial powers, but does not show that the Commission is in any degree created and established as a court for the final adjudication and determination of the rights of individuals or the rights of property."

Indeed, since it is clearly established that the South Carolina Railroad Commission possesses legislative functions, it cannot have judicial functions in addition thereto, as that would violate the rule of constitutional law requiring the departments of government forever to be kept separate. Thus in *Kilbourn vs. Thompson,* 103 U. S., 168 (26 L. ed., 387) the court, through Judge Miller, states the law in the following language:

"In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another.

"It may be said that these are truisms which need no repetition here to give them force. But, while the experience of almost a century has in general shown a wise and commendable forbearance in each of these branches from encroachment upon the others, it is not to be denied that such attempts have been made, and it is believed not always without success. The increase in number of States, in their population and wealth, and in the amount of power, if not in its nature to be exercised by the Federal Government, presents powerful and growing temptations to those to whom that exercise is intrusted, to overstep the just boundaries of their own department and enter upon the domain of one of the others, or to assume powers not intrusted to either of them."

The precise question arose in *Western Union Telegraph Co. vs. Myatt,* 98 Fed. Rep., 335, and after thoroughly reviewing the authorities, the court held that the court of visitation of Kansas, being endowed with legislative functions, could not, in addition thereto, exercise judicial functions, as that would violate the fundamental rule that the legislative and judicial depart-

ments of the government must be kept separate. The following authorities also support the rule:

Cooley's Constitutional Limitations (7th edition), pp. 126-134.
2 *Elliott on Railroads,* Section 677.
Dash vs. Van Kleeck, 7 Johns, 477.
In Re Sims, 54 Kans., 1, 25, L. R. A. 110, 45 Am. St. Rep., 261..
Kansas vs. Johnson, 61 Kans., 803, 49 L. R. A., 662.

These authorities are so absolutely conclusive of the question that it would be but a work of supererogation to multiply them.

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4. The Commission is Not a Court, But Merely an Administrative Board.

The inevitable conclusion following from the principles of law laid down by the authorities above cited, is that the Railroad Commission is not a court as that term is understood in the jurisprudence of the English-speaking world. Being endowed chiefly with administrative and legislative functions, it can exercise only quasi-judicial functions in addition thereto. Such a body is known to the law as an administrative board and not a court of justice. In the recent case of *Mississippi Railroad Commission vs. Illinois Central Railroad Co.* (*MSS.*), decided December 3, 1906, this very point arose, and the court disposed of it in the following language:

"It is also objected that an injunction will not lie from a United States Court to stay proceedings in a State Court, because of the provisions of Paragraph 720, United States Revised Statutes (U. S. Comp. Stat. 1901, p. 581). *The Commission is, however, not a court, and is a mere administrative agency of the State,* as held by the Mississippi court. *Western U. Telg. Co. vs. Mississippi Railroad Commission,* 74 Miss., 80, 21, So. 15.

"It is urged, however, that proceedings in a State court were commenced by the presentation of the petition of the citizens of Magnolia to the Railroad Commission, and because the Commission, having made an order to stop the trains, would have to resort to the proper State court to aid it in the enforcement of its order, therefore, the whole proceeding must be regarded as in a State court from the commencement. Whatever may

be the provision in the State statute in regard to the enforcement solely by the State court of the order of the Railroad Commission, the proceeding while before the Commission never thereby became a proceeding in a State court, and the jurisdiction of the Federal court to enjoin the Commission from the enforcement of its order, because such order was a violation of the Federal Constitution, was not in the least affected." (Italics added.)

Again, in *Reagan vs. Farmers Loan & Trust Company*, 154 U. S., 362, 393 (38 L. ed., 1022), this court declared the law in these words:

"Passing from the question of jurisdiction to the Act itself, there can be no doubt of the general power of a State to regulate the fares and freights which may be charged and received by railroad or other carriers, and that this regulation can be carried on by means of a Commission. *Such a Commission is merely an administrative board created by the State for carrying into effect the will of the State as expressed by its legislation. Stone vs. Farmers Loan & T. Co. (Railroad Commission Cases)*, 116 U. S., 307 (29:636)." (Italics added.)

Examination shows that the Mississippi Commission was very similar to that of South Carolina.

The case of *Chicago, M. & St. P. R. Co. vs. Minnesota*, 134 U. S., 418 (33 L. ed., 970), is to the same effect, and it should be noticed also that the powers of the Railroad Commission there under consideration were precisely similar to those of the South Carolina Commission.

So we take it, instead of being well recognized throughout the land as a court, the Railroad Commission of South Carolina is, according to indisputable principles of law, nothing more than an administrative board.

Having determined that the Railroad Commission of South Carolina is not a court, we pass on the next branch of the inquiry, to-wit:

B. Was the Hearing Before the Railroad Commission Due Process of Law?

(Assignments 1 and 2.)

1. Holding of South Carolina Supreme Court and Its Error.

By reference to its opinion, it will be seen that the South Carolina Supreme Court held that, inasmuch as the Railroad Commission was a court, and inasmuch as the railroad company had been notified and had appeared and contested the matter, all requirements of due process of law had been met, for the reason that under the case of *Louisville & N. R. Co. vs. Schmidt*, 177 U. S., 230, the due process of law clause of the Fourteenth Amendment cannot control forms of procedure or regulate the practice in State courts, it requiring only sufficient notice and adequate opportunity to defend. (First opinion of court, printed Transcript of Record, p. 16.) This holding was practically repeated in the second opinion, when the court refused to consider the facts, held the order of the Commission final and conclusive, and proceeded to enforce it without making the slightest inquiry as to its reasonableness. (Second opinion of court, printed Transcript of Record, p. 123.) That this was error we shall now proceed to show.

By way of preliminary, we may remark that it is now well settled that a corporation is a person within the purview of the Fourteenth Amendment to the Constitution, and, therefore, entitled to the protection it affords.

Lake Shore & M. S. R. Co. vs. Smith, 173 U. S., 684 (43 L. ed., 858).
Smyth vs. Ames, 169 U. S., 466, 522 (42 L. ed., 840).
Gulf C. & S. F. Ry Co. vs. Ellis, 165 U. S., 150, 154 (41 L. ed., 668).
Charlotte, C. & A. R. R. vs. Gibbes, 142 U. S., 386, 391 (35 L. ed., 1054).
Santa Clara County vs. Southern Pac. R. Co., 118 U. S., 394, 396 (30 L. ed., 118).

We make no question of the soundness of the principle quoted by the court from *L. & N. R. Co. vs. Schmidt;* but we do contend that it has no application to the facts of this case. In that case *all the proceedings were had in the regularly constituted courts of Kentucky,* and ample opportunity to defend was afforded the railroad company under the rule to show cause.

This court said: "Forms of procedure in the State courts are not controlled by the Fourteenth Amendment, *provided the fundamental rights secured by the amendment are not denied.*" (Italics added.) It was further held in that case *that adequate opportunity must be afforded to defend.*

Plainly, therefore, *L. & N. R. Co. vs. Schmidt* contemplates a trial by a court, and when it is shown that the Railroad Commission is not a court, the rule it lays down with reference to procedure in State courts has no application. Even if it were a court, adequate opportunity must be afforded to defend, and its final action must not deny fundamental rights. *Chicago, B. & Q. R. Co. vs. Chicago,* 166 U. S., 226 (41 L. ed., 984). But since the Commission is not a court, so far as matters of a judicial nature are concerned, *it cannot possibly afford an opportunity to defend,* for the very obvious reason that it possesses none of the machinery of a court. Nor is this all. The fundamental rights secured by the Amendment must not be denied, and, as we shall show later, the holding final and conclusive the order of the Commission denied fundamental rights of the railroad company.

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2. Character of the Hearing Before the Commission at Latta.

In paragraphs XV and XVI of the Statement of the Case, *supra,* it appears that on July 18, 1904, the Railroad Commission notified Mr. W. N. Royall, General Superintendent of the railroad company, that they had "decided before taking final action in the matter of the train service rendered the people of Latta *to make a personal visit to Latta,*" where they would be glad to have him meet them on July 25th. (Printed Transcript of Record, p. 70.) On the date set, a railroad attorney and superintendent met with two of the Commissioners at Latta, and a conference was held. This meeting was a kind of free discussion of the situation, with not even the semblance of a trial. Indeed, the Commissioners at no time notified Mr. Royall that a trial would be had at Latta at that time, but merely stated that they would be glad to have him attend a *personal inspection* they were going to make there. Nothing was said about his being on hand with witnesses to contest the claims of the people of Latta, and *even if they had,* as we have seen, *they were absolutely without authority either to compel the attendance of witnesses* ON THE PART OF A PARTY DEFENDANT *or*

to pass judicially on any matter coming before them. Yet this mere conference the Supreme Court of the State of South Carolina has seen fit to characterize as a hearing fulfilling all the requirements of the due process of law clause of the Fourteenth Amendment.

Did the hearing afford due process of law? We think it may be laid down as an incontrovertible proposition of law that a hearing on a purely judicial question in order to constitute due process of law must be afforded a party as a matter of right, and not as a matter of grace. On this point we should like to direct the attention of the court to an able and exhaustive article by Hon. A. Caperton Braxton, on the Virginia State Corporation Commission, in No. 1, Vol. X, of the Virginia Law Register (May, 1904), (published also in the American Law Review). In this article Mr. Braxton elaborately considers the powers of a railroad commission, and reaches the conclusion that a hearing before such a body is not due process of law.

We take it that "due process of law implies and includes *actor, reus, judex,* regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceeding." 2 Coke, Inst., 47, 50; *Hoke vs. Henderson,* 4 Dev. (N. C.), 15; *Taylor vs. Porter,* 4 Hill 146; *Wynehamer vs. People,* 13 N. Y., 393; *Cooley's Const. Lim.,* 575 *et seq.* This principle is directly applicable to the facts of this case, for not a single one of its requirements have been met in the proceedings before the South Carolina Railroad Commission.

Coming down more particularly to the facts of this case, in order for the alleged hearing before this many-functioned court to have constituted due process of law, necessarily the proceedings must have been had in a regularly instituted suit. But that proceedings before such a board cannot be a suit is well settled law, as will appear from the decision of this court in *Upshur County vs. Rich.,* 135 U. S., 467 (34 L. ed., 199). The following language of Mr. Justice Bradley in that case, reviewing all the authorities, conclusively establishes that a proceeding before an administrative board, such as the South Carolina Railroad Commission, is not a suit, and does not become a suit until it reaches a "court of justice":

"The question, What is a 'suit' in the sense of the judiciary laws of the United States? has been frequently considered by this court. Reference may be made particularly to the following cases: *Weston vs. Charleston,* 27 U. S., 2 Pet., 449, 464

(7:481, 485); *Kendal vs. United States*, 37 U. S., 12 Pet., 524 (9:1181); *Holmes vs. Jennison*, 39 U. S., 14 Pet., 540, 566 (10:579, 585); *Ex Parte Milligan*, 71 U. S., 4 Wall., 2, 112 (18:281, 291); *Kohl vs. United States*, 91 U. S., 367, 375 (23:449, 452); *Gaines vs. Fuentes*, 92 U. S., 10, 21, 22 (23:524, 527, 528); *Mississippi & R. R. Boom Co. vs. Patterson*, 98 U. S., 403, 406 (25:206, 208); *Ellis vs. Davis*, 109 U. S., 485, 497 (27:1006, 1010); *Hess vs. Reynolds*, 113 U. S., 73, 78 (28:927, 929); *Pacific Railroad Removal Cases*, 115 U. S., 1, 18 (29:319, 325); *Searl vs. School Dist. No. 2*, 124 U. S., 197, 199 (31:415, 417); *Delaware County vs. Diebold Safe & Lock Co.*, 133 U. S., 473, 486, 487 (33:674, 680).

"In the four cases first cited, this court determined that writs of prohibition, mandamus and habeas corpus, prosecuted for the attainment of the parties' rights, are suits within the meaning of the law, the judgments upon which, in proper cases, may be removed into this court by writ of error. In *Weston vs. Charleston*, Chief Justice Marshall said: 'Is a writ of prohibition a suit? The term is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy in a court of justice which the law affords him. The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceedings by which the decision of the court is sought is a suit.' This definition is quoted with approbation by Chief Justice Taney in *Holmes vs. Jennison*, which was a case of habeas corpus, and by other judges in subsequent cases.

"*Mississippi & R. R. Boom Co. vs. Patterson*, *Pacific Railroad Removal Cases*, and *Searl vs School Dist. No. 2*, were cases of the assessment of the value of lands condemned for public use under the powers of eminent domain. The general rule with regard to cases of this sort is, that the initial proceeding of appraisement by commissioners is an administrative proceeding, and not a suit; but that if an appeal is taken to a court, and a litigation is there instituted between parties, then it becomes a suit within the meaning of this Act of Congress. In *Mississippi & R. R. Boom Co. vs. Patterson*, the company was authorized by the State laws of Minnesota to take land for the purpose of its business, and to have commissioners appointed to appraise its value. If their award was not satisfactory, either to the company or to the owner of the land, an appeal lay to the District Court, where it was to be entered by the clerk 'as a case upon the docket,' the land owner being designated as plaintiff and the company as defendant. The court was then required to proceed to hear and determine the case in the same manner that other cases were heard and de-

termined. Issues of fact were to be tried by a jury, unless a jury was waived. The value of the land being assessed by the jury or the court, as the case might be, the amount of the assessment was to be entered as a judgment against the company, subject to review by the Supreme Court of the State on writ of error. This mode of proceeding was followed. The Boom Company and the land owners both appealed from the award of the Commissioners. When the case was brought before the District Court, the owner, being a citizen of another State, applied for and obtained its removal to the Circuit Court of the United States, where it was tried before a jury and a judgment was rendered upon their award. We held that the appeal in that case was a suit within the meaning of the Act of Congress authorizing the removal of causes from the State to the Federal Courts. Mr. Justice Field, speaking for the court, said: 'The proceeding in the present case before the Commissioners appointed to appraise the land, was in the nature of an inquest to ascertain its value, and not a suit at law in the ordinary sense of those terms. But when it was transferred to the District Court by appeal from the award of the Commissioners, it took, under the statute of the State, the form of a suit at law, and was thenceforth subject to its ordinary rules and incidents.'

"In *Delaware County vs. Diebold Safe & Lock Co.*, it was held that where a claim against a county is heard before County Commissioners, though the proceedings are, in some respects, assimilated to proceedings before a court, yet they are not in the nature of a trial *inter partes*, but are merely the allowance or disallowance, by county officers, of a claim against the county upon their own knowledge, or upon any proof that may be presented to them; but that an appeal from their decision, tried and determined by the Circuit Court of the county, is a suit removable to the Circuit Court of the United States.

"The principle to be deduced from these cases is, that a proceeding, not in a court of justice, but carried on by executive officers in the exercise of their proper functions, as in the valuation of property for the just distribution of taxes or assessments, is purely administrative in its character, and cannot, in any just sense, be called a suit; and that an appeal in such a case to a board of assessors or commissioners having no judicial powers, and only authorized to determine questions of quality, proportion and value, is not a suit; but that such an appeal may become a suit if made to a court or tribunal having power to determine questions of law and fact, either with or without a jury, and there are parties litigant to contest the case on the one side and the other."

In the leading case of *Chicago, M. & St. P. Ry. Co. vs. Minnesota,* 134 U. S., 418 (33 L. ed., 970), the facts were briefly these: Complaint was made to the Railroad Commission of Minnesota by certain parties to the effect that the rates of the Chicago, Milwaukee & St. Paul Railway Company for the transportation of milk were excessive. Accordingly, a conference was held at the office of the Commission, the company appearing by its attorney, and the complaint was investigated. As a result an order was made reducing the rates on milk, which was subsequently sought to be enforced by a writ of mandamus issued by the Supreme Court of Minnesota. From the decision of that court the case came to this court on a writ of error, and this court reversed the judgment awarding the writ, holding that such a hearing as was accorded to the railroad company deprived it of its property without due process of law.

The precise question again arose in *Mercantile Trust Co. vs. Texas & P. R. Co.,* 51 Fed Rep., 529, 542, where the facts and rulings thereon were as follows:

"One of the counsel for the cross complainants, who was present before the Commission at Austin on the said 6th of July, 1891, and the several following days, to answer for his road, describes that assize as 'a sort of general experience meeting;' and another one of the counsel, who was also present for the same purpose, pictures it as a kind of Chautauqua class where free lectures on the general subjects of railroad freights, classifications, and rates were invited from all comers, which could result in nothing, unless a Babel, with its confusion of tongues. The defendant Commissioners say in their answer: 'The said conference, beginning on July 6, 1891, lasted for several days, and all freight rates in Texas were discussed and considered;' and again: 'Defendants aver that the session begun July 6, 1891, has never terminated or been adjourned at all, and that all the rates complained of in said bill, or which have ever been fixed by said Commission, have been fixed at the session aforesaid'; and again: 'Defendants further admit that said Commission is proposing and proceeding to make and promulgate other rates and tariffs without other formal notice than that dated June 20, 1891.'

"The suggestion that the proceedings here indicated constitute 'due process of law,' within the meaning of the provisions of the Constitution, or 'an investigation by judicial machinery,' within the meaning of the decisions of the Supreme Court, can hardly be seriously made by the sound lawyers who have appeared to resist these motions. And the subject is too grave for jest. *U. S. vs. Lee,* 106 U. S., 196, 1 Sup. Ct. Rep., 240;

Poindexter vs. Greenhow, 114 U. S., 270, 5 Sup. Ct. Rep., 903, 962; *Railway Co. vs. Minnesota,* 134 U. S., 418, 10 Sup. Ct. Rep., 462; *Jones vs. Robbins,* 8 Gray, 329; *City of Louisville vs. Cochran,* 82 Ky., 15."

So it is not the mere fact that the defendant was notified and appeared that constitutes due process of law. The protection afforded by the Amendment is more substantial than that, for in the carrying out of the rights guaranteed by the Constitution, this court looks to substance rather than form. Therefore, in ascertaining whether proceedings of a court—and much more so of an administrative board such as a Railroad Commission—the inquiry must always be directed to determining whether the fundamental rights guaranteed by the Amendment have been faithfully preserved to the party condemned. The law on this subject is thus well stated by Mr. Justice Harlan in *Chicago, B. & Q. R. Co., vs. Chicago,* 166 U. S., 226, 234 (41 L. ed., 984):

"Nor is the contention that the railroad company has been deprived of its property without due process of law entirely met by the suggestion that it had due notice of the proceedings for condemnation, appeared in court, and was admitted to make defense. It is true that this court has said that a trial in a court of justice, according to the modes of proceeding applicable to such case, secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice—the court having jurisdiction of the subject-matter and of the parties, and the defendant having full opportunity to be heard—met the requirements of due process of law. *United States vs. Cruikshank,* 92 U. S., 542, 554 (23:588, 592); *Leeper vs. Texas,* 139 U. S., 462, 468 (35:225, 227). But a State may not by any of its agencies disregard the prohibitions of the Fourteenth Amendment. Its judicial authority may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that Amendment. In determining what is due process of law, regard must be had to substance, not to form."

To the same effect is *Fayerweather vs. Ritch,* 195 U. S., 276, 297 (49 L. ed., 209).

Again, in *Charles vs. City of Marion,* 98 Fed. Rep., 168, it is said:

"It is not sufficient to constitute due process of law, that the statute provides for a hearing and notice. It is essential to due process of law that there should not only be notice of a time and place for a hearing, but, more important, that there should be a tribunal clothed with power by methods and rules prescribed by law to hear and determine the question involved."

In the light of these authorities we deem it unnecessary to pursue further this branch of the subject, and, therefore, leave it to enter upon the larger and more comprehensive inquiry embraced in the third question arising under this head, to-wit:

C. Is the Determination by a State Railroad Commission That Fast Mail and Passenger Trains Engaged Wholly in Interstate Commerce Must be Stopped at a Small Town Final and Conclusive so as to Preclude any Inquiry by the Court in a Mandamus Proceeding to Enforce the Order of the Commission Into the Necessity and Reasonableness of Such Order; or Would Not the Enforcement of the Order by the Court, Without Judicially Determining Its Necessity and Reasonableness, be a Denial of Due Process of Law and the Equal Protection of the Laws?

(*Assignments 1, 2, and 6.*)

1. Preliminary

Before proceeding to a discussion of the questions here raised, it would be well to get clearly in mind the exact position taken by the South Carolina court in the matter. The railroad company demurred to the complaint as failing to state a cause of action for the reason that the order of the Commission was not the result of a judicially determined fact, and that to enforce it without giving the company its day in court on the merits of the order would deprive the company of its property without due process of law. This ground of demurrer the court overruled, holding that the Railroad Commission was a court, and, therefore, its order was a judicially determined fact. Notwithstanding this holding, the court, on motion of the Attorney-General, appointed its referee to take the testimony, presumably for the purpose of trying the merits of the case; but when the trial was had, the court refused to consider the testimony, saying: "As the facts were judicially determined by a tribunal

empowered by statute to make such adjudication, they are not subject to review by this court, in the absence of allegations charging fraud or other grounds for setting aside the adjudication." (Second opinion, printed Transcript of Record, p. 123.) Here is an absolute holding that the finding and order of the Commission were final and conclusive under the terms of the statute, and the court's only duty was to enforce it. If such be the proper construction of the South Carolina statute (and it is the proper construction so far as this court is concerned), does it not accomplish a result that denies to the railroad company its rights under the Fourteenth Amendment to the Constitution? That it does, it is now our purpose to show.

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2. The Requiring of Trains to Stop in Order to Furnish Additional Facilities is a Legislative Function.

In order to determine whether the order of the Commission requiring trains Nos. 32 and 35 to stop at Latta was final and conclusive, and, therefore, a denial of due process of law and the equal protection of the laws, it will be necessary to analyze the functions exercised by the Commission in promulgating that order. It is quite clear that the requiring adequate local facilities to be furnished at Latta by stopping certain trains was a legislative act on the part of the Commission, as is well settled by numerous authorities. Thus in the *Express Cases,* 117 U. S., 1 (29 L. ed., 803), where the question was as to the right of a court to prescribe the facilities that should be furnished by a railroad company to an express company using its line, this court said:

"The regulation of matters of this kind is legislative in its character, not judicial. To what extent it must come, if it comes at all, from Congress, and to what extent it may come from the States are questions we do not now undertake to decide; but that it must come, when it does come, from some source of legislative power we do not doubt."

Speaking of the functions of a Railroad Commission, the court in *Western Union Tel. Co. vs. Myatt,* 98 Fed Rep., at p. 341, uses this language:

"*In prescribing regulations or rules of action under the police power of the State for the safety and convenience of the public,*

or in determining a schedule of rates and charges for services to be rendered, they are in no sense performing judicial functions, nor are they in any respect judicial tribunals." (Italics added.)

To the same effect are:

Munn vs. Illinois, 94 U. S., 113 (24 L. ed., 77).

Chicago, B. & Q. R. Co. vs. Iowa, 94 U. S., 155 (24 L. ed., 94).

Peik vs. Chicago & Northwestern R. Co., 94 U. S., 164 (24 L. ed., 97).

Railroad Commission Cases, 116 U. S., 307 (29 L. ed., 636).

Dow vs. Beidelman, 125 U. S., 680 (31 L. ed., 841).

Chicago, M. & St. Paul R. Co. vs. Minnesota, 134 U. S., 418 (33 L. ed., 970).

Minneapolis Eastern R. Co. vs. Minnesota, 134 U. S., 467 (33 L. ed., 985).

Chicago & G. T. R. Co. vs. Wellman, 143 U. S., 339 (36 L. ed., 179).

Budd vs. New York, 143 U. S., 517 (36 L. ed., 247).

Reagan vs. Farmers Loan & Trust Co., 154 U. S., 362 (38 L. ed., 1023).

St. Louis & S. F. R. Co. vs. Gill, 156 U. S., 649 (39 L. ed., 567).

Cincinnati, N. O. & T. P. vs. Interstate Commerce Commission, 162 U. S., 184 (40 L. ed., 935).

Texas & Pacific Ry. Co. vs. Interstate Commerce Commission, 162 U. S., 197 (40 L. ed., 940).

Covington & L. Turnpike Road Co. vs. Sandford, 164 U. S., 578 (41 L. ed., 560).

Interstate Commerce Commission vs. Cincinnati, N. O. & T. P. R. Co., 167 U. S., 479 (42 L. ed., 253).

Lake Shore & M. S. R. Co. vs. Smith, 173 U. S., 684 (43 L. ed., 858).

3. The Right to Say Whether an Order Requiring Trains to Stop in Order to Furnish Additional Facilities is Necessary and Reasonable is a Judicial Function, and to Hold Final and Conclusive a Legislative Body's Action Thereon Denies Due Process of Law.

But while the requiring of a railroad company to stop trains or provide conveniences is a legislative function, the power to declare such requirement necessary and reasonable, and, therefore, valid, *rests exclusively with the judicial department of the government, and can in no sense be exercised by the legislative branch.* This distinction is important and fundamental as one going to the very foundations upon which all republican government rests. It is one thing for the Legislature to enact a law, but quite another for it to say that that law is final and conclusive, and the only thing left for the citizen to do is to render obedience thereto. The first is a legitimate exercise of the functions of government; the second is tyranny under the guise of legal forms.

Before proceeding with the argument, we may say that we fail to see anything in the recent case of *Atlantic Coast Line R. Co. vs. North Carolina Corporation Commission,* Sup. Ct. United States, filed April 29, 1907, that militates in the slightest against the view we take of this branch of the case. In that case it was insisted that the order of the Corporation Commission, approved by the courts of North Carolina, requiring the defendant company to make connection with the train of the Southern Railway at Selma, N. C., was so inherently unjust and unreasonable because of the nature of the burden necessarily imposed as to amount to taking property without due process of law. It appears that the Commission found it a matter of physical impossibility for the defendant to make the connection with its through train, but that such could be done either by extending the run of two local trains or by putting on a new train. Putting on the new train was deemed the most feasible by all parties, and this court held that the operation of such train, although it resulted in a daily loss to the defendant, was not a denial of due process of law, because the facts of the case showed that the net earnings of the road were such that adequate remuneration would result to it from its general operations in the State despite this loss, and this being so, the defendant should perform its duty of supplying the public with facilities.

The doctrine we contend for was not and could not have been involved in that case. The Commission passed on the facts three separate times, then the matter was taken to the courts. All the issues were then tried *de novo* before the Superior Court of Wake County, North Carolina, and a jury, and from the judgment rendered therein an appeal was taken to the Supreme Court of the State, which thoroughly reviewed the facts. The case then came to this court and another thorough examination of the facts was made. It thus appears *that the defendant was not condemned until after the fullest judicial investigation of the facts;* and, therefore, there could be no question of the proceedings not being due process of law. The case at bar is totally different. *The Commission was not only without authority to pass judicially on the facts, but it had no facts before it upon which to pass.* The case then came before the State Supreme Court, *which held that the Commission's finding was final and conclusive, and the sole duty of the court was to enforce it, and refused to determine the merits of the case, although it had appointed a referee to take the testimony.* Had this testimony been considered, the order made could not have been passed; and *this condemnation without a trial we contend was a denial of due process of law.* In this contention we think we are fully sustained by the authorities.

Ever since Chief Justice Marshall pronounced his famous judgment in *Marbury vs. Madison*, 1 Cranch, 137, to the effect that a law in conflict with the Constitution is void, it has been an established principle in the constitutional law of this country that the Legislature is entrusted with the duty of making laws, but the power to pass upon their validity rests exclusively with the judicial department of the government. If this be the law with reference to the Legislature, which is a branch of the government coördinate with the courts, much more must it be with reference to a Commission discharging legislative functions.

Coming down to the facts of this case, the authorities are overwhelmingly against the ruling of the South Carolina Supreme Court. Before referring to the decisions, we quote from a few text-books of well-recognized authority. Thus in a note at page 874 of the seventh edition of *Cooley's Constitutional Limitations* it is said:

"A State cannot empower a Commission to fix rates finally without opportunity for a judicial hearing on the question of their reasonableness."

In Section 574 of the latest edition (1906) of *Hutchinson on Carriers*, we find the following clear statement of the law:

"Where the State may regulate the rates to be charged, it is competent to establish a board or commission to carry the regulations into effect; but an Act which makes the action of such a board or commission final and exclusive of judicial review is void, as depriving the carrier of the equal protection of the law and depriving him of his property without due process of law."

Turning to the decisions, what do we find the courts have said on the subject? Universally and uniformly they have declared that the right to say whether requirements with reference to rates, facilities and matters of that character are reasonable and proper rests with the courts, and to make the order of a Railroad Commission thereon final and conclusive takes the property of the defendant railroad company without due process of law, and denies to it the equal protection of the laws. The leading case in this country appears to be *Chicago, M. & St. P. Ry. Co. vs. Minnesota*, 134 U. S., 418 (33 L. ed., 970), which is so nearly on all fours with the case at bar as, in our view, to be practically conclusive of it. Being so directly in point, we take the liberty of referring to it at length. The facts were these: The Legislature of Minnesota enacted a statute creating a Railroad and Warehouse Commission endowed with functions very similar to those of the South Carolina Railroad Commission, as will appear by examination of the two statutes. This being the case, "on the 22d of June, 1887, the Boards of Trade Union of Farmington, Northfield, Faribault and Owatonna, in Minnesota, filed with the Commission a petition, in writing, complaining that the Chicago, Milwaukee and St. Paul Railway Company * * * made charges for its services in the transportation of milk from said Owatonna, Faribault, Dundas, Northfield, and Farmington to St. Paul and Minneapolis, which were unequal and unreasonable, in that it charged four cents per gallon for the transportation of milk from Owatonna to St. Paul and Minneapolis, and three cents per gallon from Faribault, Dundas, Northfield, and Farmington to the said cities; and that such charges were unreasonably high, and subjected the traffic in milk between said points to unreasonable prejudice and disadvantage. The prayer of the petition was that such rates be declared unreasonable, and the carrier be compelled to change the same and adopt such rates and charges as the Commission should declare to be equal and reasonable."

The Commission forwarded this complaint to the railway company, and called upon it to satisfy or answer the said complaint on a certain date. The assistant general manager of the road then wrote to the Commission denying that the rates were unreasonable, and alleged on the contrary that they were unreasonably low. "On the 13th day of July, 1887, at the office of the Commission in St. Paul, the company appeared by J. A. Chandler, its duly authorized attorney, and the Boards of Trade Union by its attorney, and the Commission proceeded to investigate the complaint. An investigation of the rates charged by the company for its services in transporting milk from Owatonna, Faribault, Dundas, Northfield, and Farmington to St. Paul and Minneapolis, was made by the Commission, and it found that the charges of the company for transporting milk from Owatonna and Faribault to St. Paul and Minneapolis were three cents per gallon in ten-gallon cans, that such charges were unequal and unreasonable, and that the company's tariff of rates for transporting milk from Owatonna and Faribault to those cities * * * was unequal and unreasonable; and the Commission declared that a rate of two and one-half cents per gallon in ten-gallon cans was an equal and reasonable rate for such services." The Commission then proceeded to promulgate its order to the effect that two and one-half cents per gallon was a reasonable and proper charge; but the company refused to adopt the rates prescribed by the Commission. Thereupon the Commission, through the Attorney-General, applied to the Supreme Court of the State for a writ of mandamus to compel the railway company to adopt the tariff of rates prescribed by it. The court issued an alternative writ of mandamus returnable before it on December 14, 1887. The company in due time filed its return, wherein it set up, *inter alia*, that the order of the Commission deprived it of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

"The case came on for hearing upon the alternative writ and return, and the company applied for a reference to take testimony on the issue raised by the allegations in the application for the writ and the return thereto, as to whether the rate fixed by the Commission was reasonable, fair and just. The court denied the application for a reference, and rendered judgment in favor of the relator and that a peremptory writ of mandamus issue," holding that the order of the Commission was final and

conclusive. An application for a reargument was made and denied, and the case was then brought to this court by writ of error.

From this review of the facts it is evident that this case differs from the one at bar in only two particulars, to-wit: There the Commission was fixing rates instead of requiring facilities, but the two things are identical in principle; and there the court refused to appoint a referee, while here it appointed the referee, and then refused to consider the testimony reported by him, so that the two are practically identical in every particular.

In this state of facts, this court said:

"The construction put upon the statute by the Supreme Court of Minnesota must be accepted by this court for the purposes of the present case as conclusive, and not to be re-examined here as to its propriety or accuracy. The Supreme Court authoritatively declares that it is the expressed intention of the Legislature of Minnesota, by the statute, that the rates recommended and published by the Commission, if it proceeds in the manner pointed out by the Act, are not simply advisory, nor merely *prima facie* equal and reasonable, but final and conclusive as to what are equal and reasonable charges; that the law neither contemplates nor allows any issue to be made or inquiry to be had as to their equality or reasonableness in fact; that, under the statute, the rates published by the Commission are the only ones that are lawful, and, therefore, in contemplation of law the only ones that are equal and reasonable; and that, in a proceeding for a mandamus under the statute, there is no fact to traverse except the violation of law in not complying with the recommendations of the Commission. In other words, although the railroad company is forbidden to establish rates that are not equal and reasonable, there is no power in the courts to stay the hands of the Commission if it chooses to establish rates that are unequal and unreasonable.

"This being the construction of the statute by which we are bound in considering the present case, we are of opinion that, so construed, it conflicts with the Constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a Railroad Commission which, in view of the powers conceded to

it by the State court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice.

"Under Section 8 of the statute, which the Supreme Court of Minnesota says is the only one which relates to the matter of the fixing by the Commission of general schedules of rates, and which section, it says, fully and exclusively provides for that subject, and is complete in itself, all that the Commission is required to do is, on the filing with it by the railroad company of copies of its schedules of charges, to 'find' that any part thereof is in any respect unequal or unreasonable, and then it is authorized and directed to compel the company to change the same and adopt such charge as the Commission 'shall declare to be equal and reasonable,' and, to that end, it is required to inform the company in writing in what respect its charges are unequal and unreasonable. No hearing is provided for, no summons or notice to the company before the Commission has found what it is to find and declared what it is to declare, no opportunity provided for the company to introduce witnesses before the Commission, in fact, nothing which has the semblance of due process of law; and, although in the present case it appears that prior to the decision of the Commission the company appeared before it by its agent, and the Commission investigated the rates charged by the company for transporting milk, yet it does not appear what the character of the investigation was or how the result was arrived at."

In this same case Mr. Justice Miller delivered a concurring opinion, which is such a clear presentation of the law governing this class of cases that we quote it in full:

"I concur, with some hesitation, in the judgment of the court, but wish to make a few suggestions of the principles which I think should govern this class of questions in the courts. Not desiring to make a dissent, nor a prolonged argument in favor of any views I may have, I will state them in the form of propositions:

"1. In regard to the business of common carriers limited to points within a single State, that State has the legislative power to establish the rates of compensation for such carriage.

"2. The power which the Legislature has to do this can be exercised through a Commission which it may authorize to act in the matter, such as the one appointed by the Legislature of Minnesota by the Act now under consideration.

"3. Neither the Legislature nor such Commission acting under the authority of the Legislature, can establish arbitrarily and without regard to justice and right a tariff of rates for

such transportation, which is so unreasonable as to practically destroy the value of property of persons engaged in the carrying business on the one hand, nor so exorbitant and extravagant as to be in utter disregard of the rights of the public for the use of such transportation on the other.

"4. In either of these classes of cases there is an ultimate remedy by the parties aggrieved, in the courts, for relief against such oppressive legislation, and especially in the courts of the United States, where the tariff of rates established either by the Legislature or by the Commission is such as to deprive a party of his property without due process of law.

"5. But until the judiciary has been appealed to to declare the regulations made, whether by the Legislature or by the Commission, voidable for the reasons mentioned, the tariff of rates so fixed is the law of the land, and must be submitted to both by the carrier and the parties with whom he deals.

"6. That the proper, if not the only, mode of judicial relief against the tariff of rates established by the Legislature or by its Commission, is a bill in chancery asserting its unreasonable character and its conflict with the Constitution of the United States, and asking a decree of court forbidding the corporation from exacting such fare as excessive, or establishing its right to collect the rates as being within the limits of a just compensation for the services rendered.

"7. That until this is done it is not competent for each individual having dealings with the carrying corporation, or for the corporation with regard to each individual who demands its services, to raise a contest in the courts over the questions which ought to be settled in this general and conclusive method.

"8. *But in the present case, where an application is made to the Supreme Court of the State to compel common carriers, namely, the railroad companies, to perform the services which their duty requires them to do for the general public, which is equivalent to establishing by judicial proceeding the reasonableness of the charges fixed by the Commission, I think the court has the same right and duty to inquire into the reasonableness of the tariff of rates established by the Commission before granting such relief, that it would have if called upon to do so by a bill of chancery.*

"9. I do not agree that it was necessary to the validity of the action of the Commission that previous notice should have been given to all common carriers interested in the rates to be established, nor to any particular one of them, any more than it would have been necessary, which I think it is not, for the Legislature to have given such notice if it had established such rates by legislative enactment.

"10. But, when the question becomes a judicial one, and the validity and justice of these rates are to be established or rejected by the judgment of a court, it is necessary that the railroad corporations interested in the fare to be considered should have notice and have a right to be heard on the question relating to such fare which I have pointed out as judicial questions. For the refusal of the Supreme Court of Minnesota to receive evidence on this subject, I think the case ought to be reversed, on the ground that this is a denial of due process of law in a proceeding which takes the property of the company, and if this be a just construction of the statute of Minnesota it is for that reason void." (Italics added.)

This opinion of Mr. Justice Miller is very important, for the reason that *it unequivocally holds that in the mandamus proceeding to enforce the order of the Commission, the court could and should have tried the question of reasonableness, and that its refusal to receive evidence on that subject deprived the company of its property without due process of law.* In the subsequent case of *St. Louis & S. F. Co. vs. Gill*, 156 U. S., 649, 659 (39 L. ed., 571), this court, in a unanimous opinion written by Mr. Justice Shiras, quoted this opinion of Mr. Justice Miller as a correct exposition of the law. So it may now be regarded as the established law of this court. Such being the settled law, the error of the South Carolina Supreme Court in refusing to consider the testimony is quite palpable,—but we pass on.

The case of *Minneapolis Eastern Ry. Co. vs. Minnesota*, 134 U. S., 467 (33 L. ed., 985), was very similar to that of *Chicago, M. & St. P. Ry. Co. vs. Minnesota, supra*, the Commission there fixing the rates for transferring cars, but without any hearing accorded the railroad. The doctrine of *Chicago, M. & St. P. Ry. Co. vs. Minnesota* was, therefore, reaffirmed.

So in the *Railroad Commission Cases*, 116 U. S., 307 (29 L. ed., 644), this court said:

"From what has been said it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without a reward; neither can it do that in law which amounts to a taking of private property for public use without just compensation, or without due process of law."

In *Reagan vs. Farmers Loan & Trust Company*, 154 U. S., 362 (38 L. ed., 1014), the Farmers' Loan & Trust Company, as trustee of a certain railroad company, instituted a suit to enjoin such railroad company and the Railroad Commission and Attorney-General of Texas from putting or continuing in effect certain rates that had been fixed by the said Commission as reasonable and proper after a hearing accorded to certain railroads similar to the conference held at Latta (see 51 Fed. Rep., at p. 542): The bill alleged the rates were unreasonable and unjust, and the United States Circuit Court for the Western District of Texas so held them, and accordingly granted an injunction, not only restraining their adoption, but, in addition, forbidding the Railroad Commission either from discharging any duties under the Act or from establishing reasonable rates and regulations. On appeal this court reversed the two last mentioned requirements of the decree, but affirmed the portion of it enjoining the defendants from enforcing the rates already made.

In this case Mr. Justice Brewer makes an elaborate review of the cases, and at page 399 announces the conclusion of the court in the following words:

"These cases all support the proposition that while it is not the province of the courts to enter upon the merely administrative duty of framing a tariff of rates for carriage, it is within the scope of judicial power and a part of judicial duty to restrain anything which, in the form of a regulation of rates, operates to deny to the owners of property invested in the business of transportation that equal protection which is the constitutional right of all owners of other property. There is nothing new or strange in this. It has always been a part of the judicial function to determine whether the act of one party (whether that party be a single individual, an organized body, or the public as a whole) operates to divest the other party of any rights of person or property. In every Constitution is the guarantee against the taking of private property for public purposes without just compensation. The equal protection of the laws which, by the Fourteenth Amendment. no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of the one individual is without compensation wrested from him for the benefit of another, or of the public. This, as has been often observed, is a government of law, and not a government of men, and it must never be forgotten that under such a government, with its constitutional limitations and guarantees, the forms of law and

the machinery of government, with all of their reach and power, must in their actual workings stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property, legally acquired and legally held."

In *St. Louis & S. F. Co. vs. Gill*, 156 U. S., 648, 657 (39 L. ed., 570), this court had before it the question of the reasonableness of rates for transportation as fixed by a State Legislature, and stated the law in the following language:

"There is a remedy in the courts for relief against legislation establishing a tariff of rates which is so unreasonable as to practically destroy the value of property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one, and hold such Acts of legislation to be in conflict with the Constitution of the United States as depriving the companies of their property without due process of law, and as depriving them of the equal protection of the laws. *Stone vs. Farmers Loan & Trust Co.*, 116 U. S., 331 (29:644); *Dow vs. Beidelman*, 125 U. S., 681 (31:841), 2 Inters. Com. Rep., 56; *Chicago, M. & St. P. R. Co. vs. Minnesota*, 134 U. S., 418 (33:970), 3 Inters. Com. Rep., 209; *Chicago & G. T. R. Co. vs. Wellman*, 143 U. S., 331 (36:176); *Reagan vs. Farmers Loan & T. Co.*, 154 U. S., 362 (38:1014), 4 Inters. Com. Rep., 560."

So in *Smyth vs. Ames*, 169 U. S., 466 (42 L. ed., 819), the question of reasonableness of rates again arose. There the plaintiff, as stockholder in certain railroad companies, procured an injunction from the United States Circuit Court of Nebraska restraining the Board of Transportation of that State from enforcing an Act of the Legislature prescribing rates of transportation, on the ground that such Act was repugnant to the Constitution of the United States. Upon appeal to this court, the decree of the Circuit Court awarding the injunction was duly affirmed. This court said (pp. 527-528):

"While rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and, therefore, without due process of law, cannot be so conclusively determined by the Legislature of the State or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry. * * *

"What are the considerations to which weight must be given, when we seek to ascertain the compensation that a railroad company is entitled to receive, and a prohibition upon the receiving of which may be fairly deemed a deprivation by legislative decree of property without due process of law? Undoubtedly that question could be more easily determined by a commission composed of persons whose special skill, observation and experience qualify them to so handle great problems of transportation as to do justice to the public and to those whose money has been used to construct and maintain highways for the convenience and benefit of the people. But, despite the difficulties that confessedly attend the proper solution of such questions, the court cannot shrink from the duty to determine whether it be true, as alleged, that the Nebraska statute invades or destroys rights secured by the supreme law of the land. No one, we take it, will contend that a State enactment is in harmony with that law simply because the Legislature of the State has declared such to be the case; for that would make the State Legislature the final judge of the validity of its enactment, although the Constitution of the United States and the laws made in pursuance thereof are the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding. Article 6. The idea that any Legislature, State or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and State, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. This function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institutions and the liberty which is enjoyed under them depend, in no small degree, upon the power given the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land."

So again in *Western Union Tel. Co. vs. Myatt*, 98 Fed. Rep., 335, where the powers of the Kansas Railroad Commission, called a Court of Visitation, were under discussion, the court said, at page 342:

"Concisely stated, to prescribe a tariff of rates and charges is a legislative function; to determine whether existing or prescribed rates and charges are unreasonable is a judicial function. That this is the settled doctrine in this country is no

longer open to question. It is firmly fixed in the body of our jurisprudence. *Reagan vs. Trust Co.*, 154 U. S., 362, 14 Sup. Ct., 1047, 38 L. ed., 1014; *Smythe vs. Ames*, 169 U. S., 466, 18 Sup. Ct., 418, 42 L. ed., 819. It follows, therefore, as a corollary of this doctrine, that courts have no power to prescribe a schedule of rates and charges for persons engaged in a public or quasi-public service, because that is a legislative prerogative, and that the Legislature has no power to forestall the judgment of the courts by declaring that a tariff or schedule prescribed by it is a finality, and thus prevent an inquiry into the reasonableness thereof by the courts in a controversy properly challenging such reasonableness. The legislative prerogative is the power to make the law, to prescribe the regulation or rule of action. The jurisdiction of the courts is to construe and apply the law or regulation after it is made. The two functions are essentially and vitally different."

But it is needless to pursue the inquiry further, and we merely refer without quotation to other cases supporting the rule:

Chicago & G. T. Ry. Co. vs. Wellman, 143 U. S., 339 (36 L. ed., 176).

Covington & Lexington Turnpike Road Co. vs. Sandford, 164 U. S., 578 (41 L. ed., 560).

Interstate Commerce Commission vs. Cincinnati, N. O. & T. P. Ry. Co., 167 U. S., 479 (42 L. ed., 243).

Lake Shore & M. S. Ry. Co. vs. Smith, 173 U. S., 684 (43 L. ed., 858).

Kentucky & I. Bridge Co. vs. Louisville & N. R. Co., 37 Fed. Rep., 567.

Interstate Commerce Commission vs. Lehigh Valley R. Co., 49 Fed. Rep., 177.

Clyde vs. Richmond & D. R. Co., 57 Fed. Rep., 436, 439.

Southern Pac. Co. vs. R. R. Commissioners, 78 Fed. Rep., 236, 261.

Note discussing *Munn vs. Illinois*, 62 Am. St. Rep., 289.

But it may be argued that these cases holding that the reasonableness of rates is a question for judicial determination have no application. Upon what ground could this argument possibly rest? Solely on the assumption that in fixing rates the Commission is exercising a totally different function from that it exercises when determining that facilities must be furnished. But in each case the function, according to both reason and authority, is wholly legislative, and, therefore, the ac-

tion must of necessity be identical. This being true, the reasonableness of an order requiring certain facilities to be furnished requires and demands judicial investigation and determination just as much so as does an order requiring certain rates to be adopted. Therefore the cases deciding that the reasonableness of rates must be determined by judicial inquiry in the regularly constituted courts, in order to afford to a party due process of law, are exactly analogous to the case at bar and conclusive of it. Prior to the decision of this case, the courts of South Carolina had never held that any legislative Act, whether passed by the Legislature or some of its agencies, could be final and conclusive so as to preclude any inquiry by the courts into its reasonableness as depriving a citizen of his property without due process of law. Indeed, in the case of *State vs. Earle*, 66 S. C., 194, such a doctrine was distinctly repudiated under the authority of the decisions of this court we have cited above, and it is impossible to see how the Supreme Court of that State reconciled its action in that case and the one at bar, especially in view of the fact that both that case and the one reaffirming it, *Thomasson vs. Southern R. Co.*, 72 S. C., 1, were called to the court's attention in the petition for a rehearing. (Petition for rehearing, printed Transcript of Record, p. 132).

From the authorities cited it is clear that in requiring additional facilities at Latta the Railroad Commission was discharging a legislative function, while in determining finally and conclusively that this requirement of additional facilities was necessary and reasonable, it was exercising judicial powers. A totally different role is played when the Commission consults with the Attorney-General and institutes suit to enforce its order; so that this so-called court is permitted to act as legislator, judge, and prosecutor in the same case. Can proceedings before such a many-functioned body be due process of law? We think the authorities above cited conclusively demonstrate that they cannot.

It is fundamental that a party cannot be judge in his own cause. Says Judge Cooley in his treatise on *Constitutional Limitations*, seventh edition, p. 594:

"If the Legislature is entrusted with apportioning and providing for the exercise of the judicial power, we cannot understand it to be authorized, in the execution of this trust, to do that which has never been recognized as being within the

province of the judicial authority. To empower one party to a controversy to decide it for himself is not within the legislative authority, because it is not the establishment of any rule of action or decision, but is a placing of the other party, so far as that controversy is concerned, out of the protection of the law, and submitting him to the control of one whose interest it will be to decide arbitrarily and unjustly."

It is clearly established by the case of *Western Union Telegraph Co. vs. Myatt*, 98 Fed. Rep., 335, that the Fourteenth Amendment to the Constitution of the United States insures to every citizen protection against confiscation of his property by the acts of a tribunal which is not in reality a court, and that it violates the Federal Constitution to clothe any single body of men with power to act as legislators, judges and executioners in reference to the same matter. We quote at p. 354:

"In view of what has been said of the court of visitation, and the nature of the various powers conferred upon it, would a judicial proceeding before said court to determine the reasonableness of a body of rates be due process of law, within the meaning of the first section of the Fourteenth Amendment to the Constitution? Due process of law in judicial proceedings means a course of legal proceedings acording to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. In legislative proceedings, it requires a conformity to the settled maxims of a free government, and an observance of constitutional restraints and requirements. In either case it means that there should be an omission to exercise substantial powers appertaining to the other department. Courts cannot legislate and pass judgment thereon. Legislative bodies, or boards that are constituted as legislative agencies, cannot render judgment upon their legislative acts. In either case neither the proceeding nor the result would be due process of law."

The reasoning of this case is admirable and conclusive, and the citation of authority is well-nigh exhaustive.

So in *Dash vs. Van Kleeck*, 7 Johns., 477, Chancellor Kent, speaking of an act combining the exercise of legislative and judicial functions, says:

"It is a well settled axiom that the union of these two powers is tyranny."

Again, *in Kilbourn vs. Thompson*, 103 U. S., 168 (26 L. ed., 384), this court says:

"No general power of inflicting punishment by the Congress of the United States is found in that instrument. It contains in the provision that no 'person shall be deprived of life, liberty, or property without due process of law,' the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this court, and by others of the highest authority, that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is governed by rules of law previously established. An Act of Congress which proposed to adjudge a man guilty of a crime and inflict the punishment, would be conceded by all thinking men to be unauthorized by anything in the Constitution."

The authorities cited above, to the effect that the question of reasonableness of legislation cannot be determined by the same body that legislates, rest on practically the same ground; so that we content ourselves with merely calling attention to them in addition to

Pennoyer vs. Neff, 95 U. S., 217 (24 L. ed., 572).
Hurtado vs. People of California, 110 U. S., 516 (28 L. ed., 238).
Leeper vs. Texas, 139 U. S., 462 (35 L. ed., 227).
State ex rel. Godard vs. Johnson, 61 Kan., 803, 49 L. R. A., 662.

In the light of the principles above set forth escape is impossible from the conclusion that the Supreme Court of South Carolina erred in holding final and conclusive the order of the Railroad Commission requiring trains Nos. 32 and 35 to stop at Latta, and that in enforcing it without judicially determining whether the order was necessary or reasonable, the defendant railroad company was deprived of its property without due process of law, and denied the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. Such being the conclusion, it necessarily follows that the evidence reported by the referee should have been considered and the rights of the railroad judicially determined by the State Supreme Court after such consideration in the mandamus proceeding.

It will not do to say that the court did consider the evidence because it made in its statement of facts a short and incomplete extract from the testimony of General Passenger Agent Craig (second opinion of court, printed Transcript of Record, pp. 122-123.) *That it had any intention to consider the evidence at all is distinctly repudiated by the court when it says the finding of the Commission is final, conclusive, and not subject to review.* (Second opinion of court, printed Transcript of Record, p. 123.) The court not only holds the order final and conclusive, but, in addition, declares that the only question to be decided is whether the enforcement of the order so made would be a burden on interstate commerce. (Second opinion of court, printed Transcript of Record, p. 123.) But even if this were not true, we respectfully submit that the defendant railroad company was entitled to have the testimony of all its four witnesses duly weighed and considered, and not be condemned by quoting a mere excerpt from the testimony of one of its witnesses.

Consideration of the undisputed evidence, as submitted by the court's own referee, would have shown that adequate accommodations were already furnished at Latta; that trains Nos. 32 and 35 were engaged wholly in interstate commerce and carriage of the mails, and that if they were made locals the defendant would lose both its tourist travel and the mail contract, which would mean a heavy financial loss, inasmuch as the interstate transportation of passengers was very large and the amount of mail very heavy. (Printed Transcript of Record, pp. 94 to 119, and especially pp. 96 and 116.)

In these circumstances, does it require any argument to show that the enforcement of the order would deprive the railroad company of valuable property rights? We think not, for it would hardly be contended that the loss of through travel and the transportation of the mails by their being diverted to faster competing lines does not constitute a property loss. Indeed, it was shown in testimony that so important was this interstate travel that train No. 32 averaged one hundred (100) passengers per day for a considerable time from Florida points to Richmond, Va. (Printed Transcript of Record, p. 96.)

Another fact we desire to call to the court's attention is that the South Carolina Supreme Court *denied the defendant due process of law in order to enforce an order imposing a burden on interstate commerce.* Since this is the effect of the order, it affords an additional ground for the court to hold that defend-

ant has been deprived of its property without due process of law, and denied the equal protection of the laws by the State court's refusal to pass judicially upon the necessity and reasonableness of the order stopping the trains.

Since it is so conclusively shown that the enforcement of the order of the Commission, without judicially determining its necessity and reasonableness, is a deprivation of property without due process of law, and a denial of the equal protection of the laws, we most earnestly submit that assignments of error 1, 2, and 6, raising these questions, should be sustained, and the judgment of the Supreme Court of South Carolina reversed.

This brings us to the second main question involved in the case, to-wit: control over interstate commerce.

II. CONTROL OVER INTERSTATE COMMERCE.

(Assignments 3, 4, 5, 6, 7, 8, 9, 10, and 11.)

A. Has a State Power and Authority to Interfere in Other Than Police Matters With Fast Mail and Passenger Trains Engaged Wholly in Interstate Commerce?

(Assignments 4 and 9.)

Since by Clause 3, Section 8, of Article I, of the Constitution of the United States Congress is given power to regulate commerce among the several States, the inquiry here is as to how far State authority can affect interstate commerce under our dual form of government. Manifestly a State cannot regulate interstate commerce, for that is placed in the jurisdiction of Congress, but, on the other hand, there is nothing to forbid State action, provided it does not amount to regulation. Under the decisions of this court, matters of purely internal concern are rightfully within the domain of State authority as being a proper exercise of the reserved police power of the States. *Chicago, B. & Q. R. Co. vs. Illinois*, 200 U. S., 561, 584, 50 L. ed., 606. No sufficiently comprehensive definition of the police power, it is said, has ever been given, but it is clear that all matters concerning the public health, safety, morals, welfare, and convenience fall within its scope. As was said by this court in *Bacon vs. Walker*, decided February 4, 1907, the police power "embraces regulations designed to promote the public

convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety." Without attempting to make any exhaustive citation of authority, we merely refer, in addition, to the following cases as sustaining the rule:

Chicago, B. & Q. R. Co. vs. Illinois, 200 U. S., 561, (50 L. ed., 596).
Lake Shore & M. S. R. Co. vs. Ohio, 173 U. S., 285 (43 L. ed., 702).
Hannibal, etc., R. Co. vs. Husen, 95 U. S., 465 (24 L. ed., 527).
Stone vs. Mississippi, 101 U. S., 814 (25 L. ed., 1079).
Webber vs. Virginia, 103 U. S., 344 (26 L. ed., 565).
Robbins vs. Shelby Taxing District, 120 U. S., 489 (30 L. ed., 694).

But, granting that to the States is reserved the power to enact laws for promoting the public health, the public morals, the public safety, the public welfare, and the public convenience, yet from this it does not follow that in the guise of making regulations for such purposes a State may directly burden and control interstate commerce. We take it that if such regulations help rather than hinder interstate commerce they are valid, but when they transcend this and impose a burden, they must fall. Is such the law? We think it is, as laid down by this court.

In *Henderson vs. Mayor of New York,* 92 U. S., 259 (23 L. ed., 549), we find this court saying:

"It is clear from the nature of our complex form of government that, whenever the statute of a State invades the domain of legislation which belongs exclusively to the Congress of the United States, it is void, no matter under what class of powers it may fall, or how closely allied to powers conceded to belong to the States."

So in *Hannibal, etc., R. R. Co. vs. Husen,* 95 U. S., 465 (24 L. ed., 529), it is said:

"It seems hardly necessary to argue at length that, unless the statute can be justified as a legitimate exercise of the police power of the State, it is a usurpation of the power vested exclusively in Congress. It is a plain regulation of interstate

commerce, a regulation extending to prohibition. Whatever may be the power of a State over commerce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations. Power over one is given by the Constitution of the United States, to Congress, in the same words in which it is given to the other, and in both cases it is necessarily exclusive."

Again the court further says:

"Whatever may be the nature and reach of the police power of a State, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the National Government."

In *Leisy vs. Hardin*, 135 U. S., 100 (34 L. ed., 132), this court says:

"While by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health, and comfort of persons and the protection of property so situated, yet a subject-matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by congressional action. *Henderson vs. New York City*, 92 U. S., 259 (23:543); *Hannibal & St. J. R. Co., vs. Husen*, 95 U. S., 465 (24:527); *Walling vs. Michigan*, 116 U. S., 446 (29:691); *Robbins vs. Shelby County Taxing Dist.*, 120 U. S., 489 (30:694)."

Numerous other decisions of this court might be cited to the same effect, but so conclusive are those already referred to that it would be but a work of supererogation to attempt to add thereto.

Applying the above principles, it conclusively appears that the interference in other than police matters by a State with fast mail and passenger trains engaged wholly in interstate commerce is invalid.

Having determined that under the police power a State cannot regulate interstate commerce, we are led to consider the second inquiry presented under this branch of the case, namely:

B. Even if Adequate Local Facilities are Not Furnished, Has a State Power and Authority to Compel the Furnishing of Such Facilities By Requiring Fast Mail and Passenger Trains Engaged Wholly in Interstate Commerce to Make the Stops; or is Not the Extent of State Power and Authority to Compel Additional Local Trains to be Furnished.

(Assignments 3, 7, and 8.)

The proposition for which we here contend is that a State cannot require trains engaged wholly in interstate commerce and carriage of mails to make stops in order to accommodate local needs, but that the extent of State authority is to provide for local conditions by requiring local trains to be run. In other words, is requiring mail and passenger trains wholly engaged in interstate commerce to be stopped for accommodating local needs a legitimate exercise of the police power of a State?

Though the precise question here presented has not been authoritatively settled by any decision of this court, yet several closely analogous cases have been decided that have an important bearing upon it.

The first case in which the question of stopping trains arose was *Illinois Central R. Co. vs. Illinois*, 163 U. S., 142 (41 L. ed., 107). There the effect of the statute of Illinois, as construed and applied by the Supreme Court of that State, was "to require a fast mail train, carrying interstate passengers and the United States mail from Chicago, in the State of Illinois, to places south of the Ohio River, over an interstate highway established by authority of Congress, to delay the transportation of such passengers and mails, by turning aside from the direct interstate route and running to a station three and one-half miles away from a point on that route, and back again to the same point, and thus traveling seven miles, which formed no part of its course before proceeding on its way; and to do this for the purpose of discharging and receiving passengers at that station for the interstate travel to and from which," as was admitted in the case, the railroad company furnished other and ample accommodation. Such being the facts, this court held the requirement as "unconstitutional hinderance and obstruction of interstate commerce and of the passage of the mails of the United States."

It will be observed that the question of stopping this train in order to provide local facilities was not an issue in the case, but the sole question was whether this train should be required to furnish *additional interstate facilities* when they were already sufficient. This being true, the question here raised could not possibly arise.

Following the case just cited came *Gladson vs. Minnesota*, 166 U. S., 427 (41 L. ed., 1064). In that case the train sought to be stopped ran wholly within the State of Minnesota, whose statute expressly provided that it should not apply to through trains entering the State from other States, or to transcontinental trains. In this state of facts it was held no interference with interstate commerce to require it to stop at county seats.

Then came *Lake Shore & M. S. R. Co. vs. Ohio*, 173 U. S., 285 (43 L. ed., 702), where the statute of Ohio requiring that each railway company should stop three, each way, of its regular passenger trains, if so many were run daily, at stations, cities, or villages containing over three thousand inhabitants, was held valid. There was a very strong dissent in this case by four of the justices, on the ground that the statute interfered with interstate commerce; but be that as it may, we see nothing in the case at all inconsistent with the proposition we are now contending for, and we think we are borne out by the following language of the court at p. 301:

"The statute does not stand in the way of the railroad company running as many trains as it may choose between Chicago and Buffalo without stopping at intermediate points, or only at very large cities on the route, if in the contingency named in the statute the required number of trains stop at each place containing three thousand inhabitants long enough to receive and let off passengers."

The whole tenor of the opinion is to the effect that a State has authority to compel a railroad to run a sufficient number of trains to provide for local needs. Moreover, it should be noted that there the effort was not to have particular trains stop in order to provide local accommodations, but the decision went solely to the power to legislate as to providing for the public convenience by furnishing facilities. Under the decision as rendered, the railroad sued was not required to stop its interstate commerce trains at all, but merely to run trains for the convenience of local travel.

The next case decided by this court on the question of stopping trains, was *Cleveland, C. C. & St. L. R. Co. vs. Illinois*, 177 U. S., 514 (44 L. ed., 868).

That was a case in which a writ of mandamus was filed by one of the State's attorneys in the State of Illinois to compel the defendant railway company, which for several years had operated, and was then operating, a railroad from St. Louis, Mo., through the County of Montgomery and the City of Hillsboro, the county seat of such county, to Indianapolis, Ind., to stop a regular passenger train known as the "Knickerbocker Special," at the City of Hillsboro, a sufficient length of time to receive and let off passengers with safety.

The petition was based upon a section of the statutes of the State of Illinois which required each passenger train to stop at all regular stations. The defendant answered:

"That the company furnished four regular passenger trains each way a day, passing through and stopping at Hillsboro, and that they amply accommodated the travel and afforded every reasonable facility to such city; that the Knickerbocker Special was a train specially devoted to carrying interstate transportation between the City of St. Louis and the City of New York; that the travel between these cities had grown to such an extent that it had become necessary to put on a through fast train which connected with other similar trains on the Lake Shore and New York Central Roads, and that it was necessary to put on this train because the trains theretofore run, none of which has ever been taken off, could not, by reason of stopping at Hillsboro and other similar stations, make the time necessary for eastern connections, or carry passengers from St. Louis to New York within the time which the demands of business and interstate traffic required; that the Knickerbocker Special is not a regular passenger train for carrying passengers from one point to another in the State of Illinois, such traffic being amply provided for by other trains, and that the Knickerbocker Special is used exclusively for interstate traffic from and to points without the State of Illinois; that it is not subject to regulation by the State of Illinois providing that all trains shall stop at all county seats, and that to subject it to the statutes of the various States through which it passes, requiring it to stop at county seats, would wholly destroy the usefulness of the train, and would impede and obstruct interstate commerce, and that obedience to the statute in question would require it to abandon the train."

A demurrer to the answer was sustained, and on a writ of error sued out to the United States Supreme Court, the order sustaining the demurrer to the answer was reversed.

This decision, besides being exactly in point with the case at bar, is interesting in that the Supreme Court of the United States has undertaken to say, in review of all the authorities, in what cases local legislation, State or municipal, can and cannot interfere with interstate commerce trains; and the result of this review of the authorities is that a State by legislation can do nothing which will directly burden or impede the interstate traffic of a railroad company or impair the usefulness of its facilities for such traffic, except by such legislation as has for its object the personal security and health of passengers when traveling through the State. In other words, all such legislation as can interfere with interstate commerce traffic is limited to the incidental measures that may be authorized as police regulations.

In this case the court says: "In the earliest of these cases (*Illinois C. R. Co. vs. Illinois,* 163 U. S., 142), the very statute of Illinois under consideration in this case, as construed and applied by the Supreme Court of that State, was held to be an unreasonable restriction upon interstate traffic, in requiring a fast mail train from Chicago to places south of the Ohio River, over an interstate highway established by authority of Congress, to delay the transportation of its interstate passengers and United States mail by turning aside from its direct route and running to a station (Cairo) three and one-half miles away from a point on that route, and back again to the same point, before proceeding on its way; and to do this for the purpose of discharging and receiving passengers at that station, for whom the railroad company furnished other and ample accommodation. Said Mr. Justice Gray: 'The State may doubtless compel the railroad company to perform the duty imposed by its charter of carrying passengers and goods between its termini within the State. But so long, at least, as that duty is adequately performed by the company, the State cannot, under the guise of compelling its performance, interfere with the performance of paramount duties to which the company has been subjected by the Constitution and laws of the United States.'"

The court in this case distinguishes the case of *Gladson vs. Minnesota,* 166 U. S., 427, in that it shows in that case that the legislation was directed solely to the management of trains, not interstate trains, operated solely in the State of Minnesota.

The court also in this case distinguishes the case of *Lake Shore & M. S. R. Co. vs. Ohio*, 173 U. S., 285, when it shows that the legislation in that case was directed towards the requirement of better local accommodations, in requiring a certain number of trains to stop at a certain station, and clearly shows that this is a very different proposition from the requirement by legislation that an interstate commerce train should stop at a certain station for local requirements.

Quoting further, the court says:

"The question presented in this case is this: Whether a State statute is valid which requires every passenger train, regardless of the number of such trains passing each way daily and of the character of the traffic carried by them, to stop at every county seat through which such trains may pass by day or night, and regardless also of the fact whether another train, designated especially for local traffic, may stop at the same station within a few minutes before or after the arrival of the train in question.

"The demurrer to the answer admits that the railway company furnishes a sufficient number of regular passenger trains (four each way a day) to accommodate all the local and through business along the line of the road, and that all of such trains stop at Hillsboro; that none of such trains have been taken off, and all of which ran prior to the putting on of the Knickerbocker Special, still run and still stop at Hillsboro, and that they furnish ample and sufficient accommodation to all persons desiring to travel to and from that place; that the Knickerbocker Special was put on in response to an urgent demand on the part of the through traveling public from St. Louis to New York, and that it was necessary, as the passenger trains theretofore used could not, by reason of stopping at way stations, make the time required for eastern connections, and if compelled to stop at county seats the company will be compelled to abandon the train, to the great damage of the traveling public and to the railway company.

"It is evident that the power attempted to be exercised under this statute would operate as a serious restriction upon the speed of trains engaged in interstate traffic, and might in some cases render it impossible for trunk lines running through the State of Illinois to compete with other lines running through States in which no such restrictions were applied. If such passenger trains may be compelled to stop at county seats, it is difficult to see why the Legislature may not compel them to stop at every station—a requirement which would be practically destructive of through travel, where there were competing

lines unhampered by such regulations. While, as we held in the Lake Shore Case, railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, and who not only have granted to them their franchise, but who may have contributed largely to the construction of the road, they are bound to do no more than this, and may then provide special facilities for the accommodation of through traffic. We are not obliged to shut our eyes to the fact that competition among railways for through passenger traffic has become very spirited, and we think they have a right to demand that they shall not be unnecessarily hampered in their efforts to obtain a share of such traffic. It is evident, however, that neither the greater safety of their tracks, the superior comfort of their coaches, or sleeping berths, nor the excellence of their tables would insure them such share if they were unable to compete with their rivals in the matter of time. The great efforts of modern engineering have been directed to combining safety with the greatest possible speed in transportation, both by land and water. The public demand this; the railway and steamship companies are anxious in their own interests to furnish it, and local legislation ought not to stand in the way of it.

"With no disposition whatever to vary or qualify the cases above cited, neither the conclusions of the court nor the tenor of the opinions are opposed to the principle we hold in this case, that, after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic, and legislative interference therewith is unreasonable, and an infringement upon that provision of the Constitution which we have held requires that commerce between the States shall be free and unobstructed.

"While the statute in question is operative only in the State of Illinois, it is obnoxious to the criticism made of the Louisiana statute in *Hall vs. De Cuir,* 95 U. S., 485, 24 L. ed., 547, that 'while it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct, to some extent, in the management of his business throughout his entire voyage. * * * If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight regardless of the interests of others.' The distinction between this statute and regulations requiring passenger trains to stop at railroad crossings and drawbridges, and to reduce the speed of trains when running through crowded thoroughfares; requiring its tracks to be fenced, and a bell and

whistle to be attached to each engine, signal lights to be carried at night, and tariff and time tables to be posted at proper places, and other similar requirements contributing to the safety, comfort, and convenience of their patrons—is too obvious to require discussion. *Railroad Commission Cases*, 116 U. S., 307, 334, (*sub. nom. Stone vs. Farmers Loan & T. Co.*), 29 L. ed., 636, 645, 6 Sup. Ct. Rep., 334, 388, 1191.

"We are of the opinion that the Act in question is a direct burden upon interstate commerce, and the judgment of the Supreme Court of the State of Illinois must, therefore, be reversed, and the case remanded to that court for further proceedings not inconsistent with this opinion."

It will be observed in this case that *the court has not decided that an interstate commerce train can be interfered with by local legislation in the event that local conditions are disregarded.* It has only decided on the question of demurrer, where it was admitted that local conditions were fully met, that in such a case the interstate commerce train could not be interfered with. It did not decide, or undertake to decide, that if these local conditions were not fully met, in that event local legislation could interfere with interstate commerce trains. On the contrary, the entire reasoning of the court is against such a proposition.

The language of the court in distinguishing *Lake Shore & M. S. R. Co. vs. Ohio, supra,* is so pertinent that we quote it:

"This case is readily distinguished from the one under consideration, in the fact that the statute of Ohio required only that three regular passenger trains should stop at every station containing three thousand inhabitants, *leaving the company at liberty to run as many through passenger trains exceeding three per day as it chose, without restriction as to stoppage at particular stations. In other words, it left open the loophole which the statute of Illinois has effectually closed.*" (Italics added.)

Mr. Justice Brewer and Mr. Justice Shiras, in their concurring opinion, have this to say:

"We concur in this judgment on the proposition that the Act of the Legislature of Illinois, whether reasonable or unreasonable, wise or foolish, is, as applied to the facts of this case, an attempt by the State to directly regulate interstate commerce, and, as such attempt, is beyond the power of the State."

The last utterance of this court on the subject was in *Mississippi R. R. Commission vs. Illinois Central R. Co.*, decided December 3, 1906. In that case the Railroad Commission of Mississippi, acting under authority of statutes enacted by the Legislature of that State giving to it discretionary power to require all passenger trains to stop at all county seats where there was a depot, or at such depots as the public convenience might require, after a hearing had before it, made an order requiring the fast interstate mail trains Nos. 1 and 3 of the Illinois Central Railroad to stop at Magnolia, a town of some twelve hundred inhabitants, situated in southern Mississippi. On appeal this court held the order of the Commission illegal and void as being an unconstitutional interference with interstate commerce and the passage of the United States mails.

Such being the decisions of this court on the power to stop trains, is any one justified in saying that if a railroad company is not furnishing adequate local facilities it is proper for State authority to convert its interstate commerce trains into locals rather than compel it to run the number of trains necessary to supply local needs?

The proposition we deny is that a State has any authority to compel interstate commerce trains already running to stop in order to provide local facilities, rather than requiring the railroad to run the number of purely local trains necessary to provide for local needs. Under a proper regard for the separate and distinct powers of the State and Federal Governments, such would seem to be the only logical deduction possible; and we maintain that nothing contrary thereto has ever been decided by this court. And why do we say this? Simply because no case has ever been decided where interstate commerce trains were stopped to provide for local facilities; indeed, the only cases referring to the question at all were cases where it was either *admitted or proved that abundant local facilities were already furnished,* hence no additional facilities were required.

The belief that it is proper to furnish local facilities by requiring interstate commerce trains to stop and thus impose a serious burden upon interstate traffic, rather than require more local trains within the limits of State authority, has sprung from an improper consideration of the case of *Cleveland, C. C. & St. L. R. Co. vs. Illinois*, 177 U. S., 514; but we venture to think that when properly understood, that case bears no such interpretation. In that case the answer set up, *inter alia*, that four passenger trains a day each way stopped at Hillsboro,

which afforded ample accommodations for all the travel, both local and through, of that city. To this answer, *the plaintiff interposed a demurrer,* which was sustained and a writ of mandamus awarded. This ruling was affirmed by the State Supreme court on appeal. *Necessarily the demurrer admitted that sufficient accommodations were already furnished, and, hence, more facilities of any kind were not needed.* The court neither said, nor pretended to say, that the proper way to provide local facilities was to stop trains engaged wholly in interstate commerce and not require more local trains. The attitude of the court was more like this: *An abundance of accommodations is admitted, and, therefore, there is no reason to ask for more, and to allow this particular train to be stopped would be permitting a burden upon interstate commerce, which cannot be.* The court did not say that it would not equally be a burden upon interstate commerce to require them to stop even if the local facilities were not adequate; and we submit that it would be. Requiring the trains to stop *at all* would be both impeding the interstate traffic of the company, and impairing the usefulness of its facilities for such traffic, and under the decisions of the court this would constitute an unconstitutional interference with interstate commerce. So, as we interpret this decision, it directly supports our contention, for it certainly does say that to interfere with an interstate train when local facilities are admitted to be adequate, is illegal and void; and since the burden on interstate commerce comes from the stopping of such a train, manifestly the purpose for which it is desired to have such a train stopped can have no bearing whatever on the case.

Nor do we see anything in the recent case of *Mississippi Railroad Commission vs. Illinois Central R. R. Co., supra.* inconsistent with our contention. It is true, that the learned justice who wrote the opinion in that case does say that a State Railroad Commission could, if adequate accommodations for a particular locality were not otherwise furnished, compel a train engaged wholly in interstate commerce to stop at such locality; but in our view, while all deference should be given it as coming from such a source, it can only have the force of dicta, *for the reason that the question did not arise in the case.* Careful examination of the case shows that it was clearly proved that adequate local facilities were already supplied, so that, like the *Cleveland, C. C. & St. L. R. Co. vs. Illinois* case, *supra, the question was whether interstate commerce trains could be stopped when local accommodations were furnished, and not*

whether such trains could be stopped by State authority in order to provide such accommodations when they admittedly did not exist. This language of Mr. Justice Peckham was doubtless founded on the case in 177 U. S., cited above, where there was a demurrer admitting local accommodations to be sufficient, and is to be explained by that case.

The point really decided in the case from Mississippi was that when local facilities are proved to be sufficient, interstate trains cannot be interfered with. The converse of this proposition could not be decided then, for the reason that it could not be before the court; and anything said in reference thereto must necessarily be dicta; and being dicta is subject to the famous criticism of Chief Justice Marshall in *Cohens vs. Virginia*, 6 Wheaton, 399, so often quoted:

"It is a maxim not to be disregarded, that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. *If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.* The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." (Italics added.)

Since this court has never held that a State may burden interstate commerce by requiring trains engaged wholly in such commerce to stop at given localities not having sufficient accommodations, but which could be amply supplied with such accommodations by additional local trains required to be run by authority of the State, we now proceed to inquire if such a thing can be legally done under the decisions of this court.

The question is as to the proper line of demarcation between the police power of the States and the power over interstate commerce entrusted exclusively to Congress. The test to be applied, therefore, is that laid down in the decisions of this court marking out the respective limits of the police power and interstate commerce. If stopping trains engaged wholly in interstate commerce and carrying of mails, even though it seriously impedes their progress and greatly impairs their usefulness, is not laying a burden on interstate commerce, it is valid; otherwise it is illegal and void.

This brings us to a discussion of the relative domains of the police power and of interstate commerce.

Subject to certain qualifications to be hereafter mentioned, it may be stated as a general proposition that the police power resides exclusively in the States and the control of interstate commerce exclusively in the National Government; and that in their operation each must keep within its own sphere. Numerous decisions of this court have laid down this principle, and to some of these we shall now advert.

Thus in *Brown vs. Maryland*, 12 Wheat., 419, 448 (6 L. ed., 689), this court, speaking through Chief Justice Marshall, says:

"It has been observed that the powers remaining with the States may be so exercised as to come in conflict with those vested in Congress. When this happens, that which is not supreme must yield to that which is supreme. This great and universal truth is inseparable from the nature of things, and the Constitution has applied it to the often interfering powers of the general and State governments, as a vital principle of perpetual operation."

Speaking of this question, the court in *Hannibal, etc., R. Co. vs. Husen*, 95 U. S., 465 (24 L. ed., 529), uses this language:

"It seems hardly necessary to argue at length that, unless the statute can be justified as a legitimate exercise of the police power of the State, it is a usurpation of the power vested exclusively in Congress. It is a plain regulation of interstate commerce; a regulation extending to prohibition. Whatever may be the power of a State over commerce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations. Power over one is given by the Constitution of the United States to Congress, in the same words in which it is given over the other, and in both cases it is necessarily exclusive."

Again: "Whatever may be the nature and reach of the police power of a State, it cannot be exercised over a subject confined exclusively to Congress by the Federal Constitution. It cannot invade the domain of the National Government."

In *Brown vs. Houston*, 114 U. S., 622 (29 L. ed., 260), it is said:

"It may be laid down as the settled doctrine of this court, at this day, that a State can no more regulate or impede commerce among the several States than it can regulate or impede commerce with foreign nations."

So again in *United States vs. E. C. Knight Co.*, 156 U. S., 1, 11 (39 L. ed., 329), the court says:

"On the other hand, the power of Congress to regulate commerce among the several States is also exclusive. The Constitution does not provide that interstate commerce shall be free, but, by the grant of this exclusive power to regulate it, it was left free except as Congress might impose restraints. Therefore, it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositions upon it by several States, and if a law passed by a State in the exercise of its acknowledged powers comes into conflict with that will, the Congress and the State cannot occupy the position of equal opposing sovereignties, because the Constitution declares its supremacy and that of the laws passed in pursuance thereof; and that which is not supreme must yield to that which is supreme. 'Commerce, undoubtedly is traffic,' said Chief Justice Marshall, 'but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse.' That which belongs to commerce is within the jurisdiction of the United States, but that which does not belong to commerce is within the jurisdiction of the police power of the State."

Without further quotation, we merely refer to the following cases as sustaining the rule:

Gibbons vs. Ogden, 9 Wheat., 1 (6 L. ed., 23).
Sinnot vs. Davenport, 22 How., 227 (16 L. ed., 243).
Crandall vs. Nevada, 6 Wall., 35 (18 L. ed., 746).
State Freight Tax Case, 15 Wall., 232 (21 L. ed., 163).
Welton vs. Missouri, 91 U. S., 1 (23 L. ed., 347).
Henderson vs. New York, 92 U. S., 259 (23 L. ed., 543).
Hall vs. DeCuir, 95 U. S., 485 (24 L. ed., 547).
Pensacola Tel. Co. vs. W. U. Tel Co., 96 U. S., 1 (24 L. ed., 708).
Mobile County vs. Kimball, 102 U. S., 691 (26 L. ed., 259).
Western U. Tel. Co. vs. Texas, 105 U. S., 460 (26 L. ed., 1067).
Gloucester Ferry Co. vs. Pennsylvania, 114 U. S., 196 (29 L. ed., 158).
Wabash, etc., R. Co. vs. Illinois, 118 U. S., 557 (30 L. ed., 244).

Robbins vs. Shelby Taxing District, 120 U. S., 489 (30 L. ed., 696).
Western Union Tel. Co. vs. Pendleton, 122 U. S., 347 (30 L. ed., 1187).
Bowman vs Chicago & N. W. R. Co., 125 U. S., 465 (31 L. ed., 700).
Ratterman vs. Western U. Tel. Co., 127 U. S., 411 (32 L. ed., 229).
Leloup vs. Mobile, 127 U. S., 640 (32 L. ed., 311).
Asher vs. Texas, 128 U. S., 129 (32 L. ed., 368).
Leisy vs. Hardin, 135 U. S., 100 (34 L. ed., 128).
Minnesota vs. Barber, 136 U. S., 313 (34 L. ed., 455).
Brimmer vs. Rebman, 138 U. S., 78 (34 L. ed., 862).
Harmon vs. Chicago, 147 U. S., 396 (37 L. ed., 216).
Scott vs. Donald, 165 U. S., 58 (41 L. ed., 632).
Rhodes vs. Iowa, 170 U. S., 412 (42 L. ed., 1088).
Vance vs. Vandercook, 170 U. S., 438 (42 L. ed., 1100).
Schollenberger vs. Pennsylvania, 171 U. S., 1 (43 L. ed., 49).
American Express Co. vs. Iowa, 196 U. S., 133 (49 L. ed., 417).

While it is true as a general rule that the police power and interstate commerce occupy exclusive and separate fields, yet this but roughly describes the relations they bear to each other. More strictly speaking, the subjects of interstate commerce fall into two classes, namely, those in which the States may act in the absence of legislation by Congress, and those in which the action of Congress is exclusive and the States cannot interfere at all. The earlier decisions manifested a tendency to make the jurisdiction of Congress exclusive over the whole subject, but this gradually relaxed until the decision in *Cooley vs. Board of Wardens,* 12 Howard, 300, 319 (13 L. ed., 1005), where the law was declared in these words:

"The power to regulate commerce embraces a vast field, containing not only many, but exceedingly various subjects, quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port; and some, like the subject now in question, as imperatively demanding that diversity, which alone can meet the local necessities of navigation.

"Either absolutely to affirm or deny that the nature of this power requires exclusive legislation by Congress, is to lose

sight of the nature of the subjects of this power and to assert concerning all of them what is really applicable but to a part. *Whatever subjects of this power are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.*" (Italics added.)

Subsequent cases have followed this ruling; so now the settled rule governing the subject is that laid down in *Leisy vs. Hardin*, 135 U. S., 100 (34 L. ed., 136), to-wit:

"The doctrine now firmly established is, as stated by Mr. Justice Field in *Bowman vs. Chicago & N. W. R. Co.*, 125 U. S., 507 (31:714), 'that where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers, and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the State can act until Congress interferes and supersedes its authority; but where the subject is national in its character, and *admits* and *requires* uniformity of regulation, affecting alike all the States, *such as transportation between the States, including the importation of goods from one State into another, Congress can alone act upon it and provide the needed regulations.* The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free." (Italics added.)

Covington & Cincinnati Bridge Co. vs. Kentucky, 154 U. S., 204 (38 L. ed., 962), is a notable case discussing the different phases of interstate commerce and police regulations. Mr. Justice Brown exhaustively reviews the authorities on the class of regulations that a State may make in the absence of congressional action, and we merely refer to his review of the decisions without attempting to add anything to them:

"Within the second class of cases—those of what may be termed concurrent jurisdiction—are embraced laws for the regulation of pilots (*Cooley vs. Philadelphia Port Wardens*, 53 U. S., 12 How., 299 [13:996]; *Pacific Mail SS. Co. vs. Joliffe*, 69 U. S., 2 Wall., 450 [17:805]; *Ex Parte McNeill*, 80 U. S., 13 Wall., 236 [20:624]; *Wilson vs. McNamee*, 102 U. S., 572 [26:234]); quarantine and inspection laws and the policing of harbors (*Gibbons vs. Ogden*, 22 U. S., 9 Wheat., 1, 203 [6:23,

71]; *New York vs. Miln*, 36 U. S., 11 Pet., 102 [9:648]; *Turner vs. Maryland*, 107 U. S., 38 [27:370]; *Morgan's L. & T. R. & SS. Co. vs. Louisiana Board of Health*, 118 U. S., 455 [30:237]); the improvement of navigable channels (*Mobile County vs. Kimball*, 102 U. S., 691 [26:238]; *Escanaba & L. M. Transp. Co. vs. Chicago*, 107 U. S., 678 [27:442]; *Huse vs. Glover*, 119 U. S., 543 [30:487]); the regulation of wharves, piers and docks (*Cannon vs. New Orleans*, 87 U. S., 20 Wall., 577 [22:417]; *Keokuk N. L. Packet Co. vs. Keokuk*, 95 U. S., 80 [24:377]; *Northwestern U. Packet Co. vs. St. Louis*, 100 U. S., 423 [25:688]; *Cincinnati, P. B. S. & P. Packet Co. vs. Cattleburg*, 105 U. S., 559 [26:1169]; *Pittsburg & O. R. Transp. Co. vs. Parkersburg*, 107 U. S., 691 [27:584]; *Ouachita & M. R. Packet Co. vs. Aiken*, 121 U. S., 444 [30:976], 1 Inters. Com. Rep., 379); the construction of dams and bridges across the navigable waters of a State (*Wilson vs. Black Bird Creek Marsh Co.*, 27 U. S., 2 Pet. 245 [7:412]; *Cardwell vs. American River Bridge Co.*, 113 U. S., 205 [28:959]; *Pound vs. Turck*, 95 U. S., 459 [24:525], and the establishment of ferries (*Conway vs. Taylor*, 66 U. S., 1 Black, 603 [17:191]).

"Of this class of cases it was said by Mr. Justice Curtis, in *Cooley vs. Philadelphia Port Wardens*, 53 U. S., 12 How., 299, 318 (13:996, 1004), 'If it were admitted that the existence of this power in Congress, like the power of taxation, is compatible with the existence of a similar power in the States, then it would be in conformity with the contemporary exposition of the Constitution, and with the judicial construction given from time to time by this court, after the most deliberate consideration, to hold that a mere grant of such a power to Congress did not imply a prohibition on the States to exercise the same power; that it is not the mere existence of such a power, but its exercise by Congress, which may be incompatible with the exercise of the same power by the States, and that the States may legislate in the absence of Congressional regulations.' See also *Sturges vs. Crowninshield*, 17 U. S., 4 Wheat., 192, 193 (4:547, 548). But even in the matter of building a bridge, if Congress chooses to act, its action necessarily supersedes the action of the State. *Pennsylvania vs. Wheeling & B. Bridge Co.*, 59 U. S., 18 How., 421 (15:435)."

As is pointed out in the case we have just been discussing, there is a class of regulations that come within the exclusive jurisdiction of a State, namely, those concerning the strictly internal commerce of the State and but remotely bearing upon interstate commerce. Thus a statute protecting the public from fraud and deception by prohibiting the sale of oleomar-

garine colored in imitation of butter (*Plumley vs. Massachusetts*, 155 U. S., 461, 39 L. ed., 221); a statute requiring all locomotive engineers to be licensed (*Smith vs. Alabama*, 124 U. S. 465, 31 L. ed., 508); a statute requiring all railroad employees to be examined for color-blindness (*Nashville, etc., R. Co. vs. Alabama*, 128 U. S., 96, 32 L. ed., 352); a statute requiring railroad companies to fix and post their rates annually (*Chicago, etc., Ry. Co. vs. Fuller*, 17 Wall., 560, 21 L. ed., 710); a statute prohibiting the consolidation of competing or parallel lines of railroad (*Louisville & N. R. Co. vs. Kentucky*, 161 U. S., 677, 40 L. ed., 849); a statute penalizing a telegraph company for negligently failing to deliver a message, even from without the State (*Western Union Tel. Co. vs. James*, 162 U. S., 650, 40 L. ed., 1105); a statute making it unlawful for freight trains to run on Sunday, no action having been taken by Congress on the subject (*Hennington vs. Georgia*, 163 U. S., 299, 41 L. ed., 166); a statute forbidding the heating of cars by stoves or furnaces (*New York, etc., R. Co. vs. New York*, 165 U. S., 628, 41 L. ed., 853); a statute forbidding a carrier from making a contract limiting its liability for negligence (*Chicago, etc., R. Co. vs. Solan*, 169 U. S., 133, 42 L. ed., 688); and a statute ordaining the character of proof by which a carrier might show its liability was limited to its own line (*Richmond, etc., R. Co. vs. R. A. Patterson Tobacco Co.*, 169 U. S., 311, 42 L. ed., 759), have all been upheld as valid police regulations on the part of the State.

On the other hand, a statute requiring a connecting carrier to trace lost or damaged freight and inform the shipper when, where, and by what carrier the freight was lost, damaged or destroyed (*Central of Georgia R. Co. vs. Murphey*, 196 U. S., 194, (49 L. ed., 444); and a statute requiring a common carrier to furnish cars when demanded under a penalty of twenty-five dollars for each car not furnished (*Houston & Texas Central R. Co. vs. Mayes*, 201 U. S., 321, 50 L. ed., 772), are both held illegal when applied to interstate shipments. Likewise an order of a Railroad Commission requiring cars loaded with coal that are still in the course of interstate transportation to be placed upon certain tracks for delivery, is held in *McNeill vs. Southern R. Co.*, 202 U. S., 543 (50 L. ed., 1142), to be an illegal interference with interstate commerce.

These last cited cases are but in keeping with a long line of other adjudications of this court, for in each of them the subject of regulation was not "local in its nature or sphere of operation," but national in character, and requiring uniformity of regulation. Over such subjects as these the power of Congress is exclusive. Thus in *Leisy vs. Hardin*, 135 U. S., 100 (34 L. ed., 136), it is said:

"Where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the States, such as transportation between the States, including the importation of goods from one State into another, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free."

So, in *Robbins vs. Shelby Taxing District*, 120 U. S., 489 (30 L. ed., 696), the court says:

"The Constitution of the United States having given to Congress the power to regulate commerce, not only with foreign nations, but among the several States, *that power is necessarily exclusive whenever the subjects of it are national in their character, or admit only of one uniform system or plan of regulation.* This was decided in the case of *Cooley vs. Board of Wardens of Phila.*, 53 U. S., 12 How., 299, 319 (13:996, 1004), and was virtually involved in the case of *Gibbons vs. Ogden*, 22 U. S., 9 Wheat., 1 (6:23), and has been confirmed in many subsequent cases, amongst others, in *Brown vs. Md.*, 25 U. S., 12 Wheat. 419 (6:678); *Passenger Cases*, 48 U. S., 7 How., 283 (12:702); *Crandall vs. Nevada*, 73 U. S., 6 Wall., 35, 42 (18:745, 746); *Ward vs. Md.*, 79 U. S., 12 Wall., 418, 430 (20:449, 452); *State Freight Tax Cases*, 82 U. S., 15 Wall., 232, 279 (21:146, 162); *Henderson vs. Mayor of N. Y.*, 92 U. S., 259, 272 (23:543, 549); *R. R. Co. vs. Husen*, 95 U. S., 465, 469 (24:527, 529); *Mobile vs. Kimball*, 102 U. S., 691, 697 (26:238, 239); *Gloucester Ferry Co. vs. Pa.*, 114 U. S., 196, 203 (29:158, 161); *Wabash, etc., R. Co. vs. Ill.*, 118 U. S., 557 (ante, 244)." (Italics added.)

Further citation of authority would be unnecessary, so well is the principle established.

Therefore, the right to stop trains engaged wholly in interstate commerce already running depends on whether it is a subject over which the States have power to act in the absence

of congressional legislation, or whether it is a subject exclusively within the jurisdiction of Congress, whose non-action is equivalent to a declaration that it shall be free and untrammeled. To which class does it belong?

It would hardly be contended that the requiring of a fast mail and passenger train running from New York to Florida to stop at all stations in South Carolina is "local in its nature or sphere of operation;" yet that is what must be held in order to justify concurrent jurisdiction of the States and Congress on the subject. Fortunately, however, we do not have to rest upon mere argument, as the precise question has been often decided, as we contend, by this court. In the first place, it is beyond question that the stoppage of interstate trains will operate as a serious burden upon the interstate transportation of passengers and mails, for it will lengthen the time of passage to such a degree as practically to render necessary a discontinuance of such trains on account of the resulting loss of traffic. (Statement of case, pars. 5-9.)

But, under the decisions of this court, interstate transportation of passengers is commerce within the meaning of the Constitution. Thus in *Tiernan vs. Rinker,* 102 U. S., 123 (26 L. ed., 104), it is said:

"The portion of commerce with foreign countries or between the States, which consists in the transportation and exchange of commodities, is of national importance, and admits and requires uniformity of regulation."

Again in *Gloucester Ferry Co. vs. Pennsylvania,* 114 U. S., 196 (29 L. ed., 162), this court says:

"The means of transportation of persons and freight between the States does not change the character of the business as one of commerce, nor does the time within which the distance between the States may be traversed. Commerce among the States consists of intercourse and traffic between their citizens, *and includes the transportation of persons and property* and the navigation of public waters for that purpose as well as the purchase, sale and exchange of commodities. The power to regulate that commerce, as well as commerce with foreign nations vested in Congress, is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted; to determine when it shall be free, and when subject to duties or other exactions. *The power also embraces within its control all the instrumentalities by which that*

commerce may be carried on and the means by which it may be aided and encouraged. The subjects, therefore, upon which the power may be exerted are of infinite variety. While with reference to some of them which are local and limited in their nature or sphere of operation, the States may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character and require uniformity of regulation affecting alike all the States, the power of Congress is exclusive." (Italics added.)

To the same effect is *Leisy vs. Hardin,* 135 U. S., 100 (34 L. ed., 133), and many other adjudications of this court, but we deem these sufficient to support the rule. Not only is interstate transportation of passengers commerce, but it is commerce of such a character as to require exclusive control by Congress. Thus in *Gloucester Ferry Co. vs. Pennsylvania,* 114 U. S., 196 (29 L. ed., 162), Mr. Justice Field, delivering the opinion of the court, declares the law in these words:

"It needs no argument to show that the commerce with foreign nations and between the States, *which consists in the transportation of persons* and property between them is a subject of national character and requires uniformity of regulation. *Congress alone, therefore, can deal with such transportation;* its non-action is a declaration that it shall remain free from burdens imposed by State legislation. *Otherwise there would be no protection against conflicting regulations of different States, each legislating in favor of its own citizens and products and against those of other States."* (Italics added.)

Again, in the leading case of *Wabash, etc., R. Co., vs. Illinois,* 118 U. S., 557 (30 L. ed., 249), Mr. Justice Miller, speaking for the court, uses this language:

"It cannot be too strongly insisted upon that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the States might choose to impose upon it, that the commerce clause was intended to secure. This clause giving to Congress the power to regulate commerce among the States and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution. *Cook vs. Pennsylvania,* 97 U. S., 574 (Bk. 24 L. ed., 1018); *Brown vs. Maryland,* 12 Wheat., 446 (25 U. S. bk,, 6. L. ed., 688). And it would be a very feeble and almost useless provision, but

poorly adapted to secure the entire freedom of commerce among the States which was deemed essential to a more perfect union by the framers of the Constitution if, at every stage of the transportation of goods and chattels through the country, the State within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation, or taxation, *or any other restrictive regulation interfering with and seriously embarrassing this commerce.*"

And in *Leisy vs. Hardin,* 135 U. S., 100 (34 L. ed., 133), we find this court saying:

"*The transportation of passengers* or of merchandise *from one State to another is in its nature national, admitting of but one regulating power;* and it was to guard against the possibility of commercial embarrassments which would result if one State could directly or indirectly tax persons or property passing through it, or prohibit particular property from entrance into the State, that the power of regulating commerce among the States was conferred upon the Federal Government." (Italics added.)

In the *State Freight Tax Case,* 15 Wall., 232 (21 L. ed., 163), the same question arose and the court disposed of it in the following language:

"Whenever the subjects over which a power to regulate commerce is asserted are in their nature national, or admit of one uniform system or plan of regulation, they may justly be said to be of such a nature as to require exclusive legislation by Congress. *Cooley vs. Port Wardens,* 12 How., 299; *Gilman vs. Philadelphia, supra; Crandall vs. The State of Nevada,* 6 Wall., 42 (73 U. S., XVIII, 746). *Surely transportation of passengers* or merchandise *through a State, or from one State to another, is of this nature. It is of national importance that over that subject there should be but one regulating power,* for if one State can directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportation, every other may, and thus commercial intercourse between States remote from each other may be destroyed." (Italics added.)

Numerous other cases are to the same effect, but we merely refer in addition to

Welton vs. Missouri, 91 U. S., 275 (23 L. ed., 547).
Hannibal, etc., R. Co. vs. Husen, 95 U. S., 465 (24 L. ed., 527).
Mobile County vs. Kimball, 102 U. S., 691 (26 L. ed., 238).
Webber vs. Virginia, 103 U. S., 344 (26 L. ed., 565).

These authorities conclusively demonstrate that interstate transportation of passengers is a subject over which Congress has exclusive jurisdiction. This being true, can State action be taken when Congress has not seen fit to legislate? If the jurisdiction of Congress is *exclusive,* it would seem that in no case could State action be taken; and such is the law as declared by this court.

Thus in *Welton vs. Missouri,* 91 U. S., 275 (23 L. ed., 350), it is said:

"The fact that Congress has not seen fit to prescribe any specific rules to govern interstate commerce does not affect the question. Its inaction on this subject, when considered with reference to its legislation with respect to foreign commerce, is equivalent to a declaration that interstate commerce shall be free and untrammeled."

Again in *Brown vs. Houston,* 114 U. S., 622 (29 L. ed., 260), the court says:

"The power of Congress is exclusive whenever the matter is national in its character or admits of one uniform system or *plan of regulation; and is certainly so far exclusive that no State has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the States* as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other States, coming or brought within its jurisdiction. All laws and regulations are restrictive of natural freedom to some extent, and where no regulation is imposed by the government which has the exclusive power to regulate, it is an indication of its will that the matter shall be left free. *So long as Congress does not pass any law to regulate commerce among the several States, it hereby indicates its will that that commerce shall be free and untrammeled; and any regulation of the subject by the States is repugnant to such freedom.* This has frequently been laid down as law in the judgments of this court." (Italics added.)

Quotations to the same effect and expressed in almost identical words could be multiplied almost indefinitely, but it could serve no useful purpose; hence we merely refer to the following cases as laying down the same principle:

Gilman vs. Philadelphia, 3 Wall., 713 (18 L. ed., 96).
Crandal vs. Nevada, 6 Wall., 35 (18 L. ed., 745).
State Freight Tax Case, 15 Wall., 232 (21 L. ed., 146).
Hannibal, etc., R. Co., vs. Husen, 95 U. S., 465 (24 L. ed., 527).
Tiernan vs. Rinker, 102 U. S., 123 (26 L. ed., 103).
Mobile County vs. Kimball, 102 U. S., 691 (26 L. ed., 238).
Webber vs. Virginia, 103 U. S., 344 (26 L. ed., 565).
Gloucester Ferry Co. vs. Pennsylvania, 114 U. S., 196 (29 L. ed., 158).
Walling vs. Michigan, 116 U. S., 446 (29 L. ed., 694).
Pickard vs. Pullman Southern Car Co., 117 U. S., 23 (29 L. ed., 785).
Wabash, etc., R. Co. vs. Illinois, 118 U. S., 557 (30 L. ed., 244).
Robbins vs. Shelby Taxing District, 120 U. S., 489 (30 L. ed., 696).
Bowman vs. Chicago & N. W. R. Co., 125 U. S., 465 (31 L. ed., 700).
Leisy vs. Hardin, 135 U. S., 100 (34 L. ed., 128).
Covington & Cincinnati Bridge Co. vs. Kentucky, 154 U. S., 204 (38 L. ed., 962).
United States vs. E. C. Knight Co., 156 U. S., 1 (39 L. ed., 325).

After this review of the authorities, our conclusion is that a train running from New York to Florida, and conversely, engaged wholly in the transportation of interstate passengers and the United States mails, is engaged in interstate commerce of such a character as to be within the exclusive jurisdiction of Congress, and that non-action by Congress with reference to it is equivalent to a declaration that it shall be free and untrammeled. This being the law as established by the decisions of this court, we submit that it cannot be said that this interstate transportation of passengers can be interfered with by State legislation designed to have better local facilities furnished its citizens. If it be the law that interstate transportaton is within

the exclusive domain of Congress, it must also be the law that State interference with it is unwarranted and illegal.

It may be said, however, that this would not be true in this case, for the reason that the time of a stop at Latta would be too short and unappreciable to amount to anything. This might be the case if the stops could be confined to Latta, but once admit the right to stop such trains and every station would make similar demands, which would practically destroy the tourist travel of the railroad. In fact, the uncontradicted testimony in this case shows that if these two trains were required to make stops at all places like Latta on their entire route, the time of their run would be increased seven hours (printed Transcript of Record, p. 112); and surely it requires no argument to show this court that this would be an intolerable burden on interstate commerce. Such being the facts, the language of this court in *Cleveland, C. C. & St. L. R. Co. vs. Illinois, supra,* is peculiarly pertinent:

"It is evident that the power attempted to be exercised under this statute would operate as a serious restriction upon the speed of trains engaged in interstate traffic, and might, in some cases, render it impossible for trunk lines running through the State of Illinois to compete with other lines running through States in which no such restrictions were applied. If such passenger trains may be compelled to stop at county seats, it is difficult to see why the Legislature may not compel them to stop at every station, a requirement which would be practically destructive of through travel where there were competing lines unhampered by such regulations. * * * We are not obliged to shut our eyes to the fact that competition among railways for through passenger traffic has become very spirited, and we think they have a right to demand that they shall not be unnecessarily hampered in their efforts to obtain a share of such traffic. It is evident, however, that neither the greater safety of their tracks, the superior comfort of their coaches or sleeping berths, nor the excellence of their tables would insure them such share if they were unable to compete with their rivals in the matter of time. The great efforts of modern engineering have been directed to combining safety with the greatest possible speed in transportation, both by land and water. The public demand this; the railway and steamship companies are anxious in their own interests to furnish it, and local legislation ought not to stand in the way of it."

In *Mississippi R. R. Commission vs. Illinois Central R. Co., supra,* the court again declared itself in these words:

"The order cannot be viewed alone in the light of ordering a stop at one place only, which might require not more than three minutes, as asserted. It is the question whether these trains can be stopped at all at any particular station when proper and adequate facilities are otherwise afforded such station. If the Commission can order such a train to be stopped at a particular locality under such circumstances, then it could do so as to other localities, and in that way the usefulness of a through train would be ruined and the train turned from a through to a local one in Mississippi. The Legislature of a State could not itself make such an order, and it cannot delegate the power to a commission to do so, in its discretion, when adequate facilities are otherwise furnished.

"The transportation of passengers on interstate trains as rapidly as can with safety be done is the inexorable demand of the public who use such trains. Competition between great trunk lines is fierce and at times bitter. Each line must do its best even to obtain its fair share of the transportation between States, both of passengers and freight. A wholly unnecessary, even though a small obstacle, ought not, in fairness, to be placed in the way of an interstate road, which may thus be unable to meet the competition of its rivals."

These declarations of the court are but in keeping with its ruling in *Illinois Central R. Co. vs. Illinois, supra,* to the effect that a "State can do nothing which will directly burden or impede the interstate traffic of the company, *or impair the usefulness of its facilities for such traffic.*" (Italics added.)

They also rest upon the additional ground that the power of stoppage affects the entire journey and, hence, is not within State jurisdiction. Says the court in the leading case of *Hall vs. De Cuir,* 95 U. S., 485 (24 L. ed., 548):

"It may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without or goes out from within. *While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage.* His disposition of passengers taken up and put

down within the State, or taken up within to be carried without, cannot but affect, in a greater or less degree, those taken up without and brought within, and sometimes those taken up and put down without. A passenger in the cabin set apart for the use of whites without the State must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced." (Italics added.)

Wabash, etc., R. Co. vs. Illinois, supra, is practically to the same effect.

This power to affect the entire journey gives the key to the whole situation, and renders it certain that State interference with interstate commerce trains for the purpose of supplying local needs is beyond the authority of State legislation.

So far as the case at bar is concerned, it is also shown that the two trains sought to be stopped are under a contract to carry the United States mails, and that such contract requires them to make their schedules or else make good excuse for the delay. (Statement of Case, *supra,* Paragraph VIII.) Would not this also give rise to Federal rights to be respected by the State? On this point, this court, in *Illinois Central R. Co. vs. Illinois, supra,* uses the following language:

"It may be well, as held by the courts of Illinois, that the arrangements made by the company with the Postoffice Department of the United States, cannot have the effect of abrogating a reasonable police regulation of the State. But *a statute of the State which unnecessarily interferes with the speedy and uninterrupted carriage of the mails of the United States cannot be considered as a reasonable police regulation.*" (Italics added.)

Again in the recent case of *Mississippi Railroad Commission vs. Illinois Central R. Co., supra,* it is held that:

"The fact that the company has contracts to transport the mails of the United States *within a time which requires great speed for the trains carrying them,* while not conclusive, may still be considered upon the general question of the propriety of stopping such trains at certain stations within the boundaries of a State."

Our conclusion, therefore, is that under the decisions of this court, though there may be a few DICTA to the contrary, a State

has no right to require a train engaged wholly in interstate transportation of passengers and carriage of the mails to stop in order to provide better local accommodations not otherwise adequate, but that the limit of State authority is to require more trains within the State. The true rule would seem to be that announced by the Circuit Court of Appeals (as a *dictum*) in *Illinois Central R. Co. vs. Mississippi R. R. Commission*, 138 Fed., 333:

"The State unquestionably has ample power to require the complainant company to furnish adequate facilities and accommodations to the town of Magnolia. The citizens of Magnolia have not asked for such relief as could be granted them without interfering with the rights of others. They ask only to have two trains, Nos. 1 and 3, to stop. These trains were designed and scheduled for through travel and to comply with government contracts to carry the mails from Chicago to New Orleans. If the statutes may be applied to stop through trains at Magnolia, they may be stopped at all stations in Mississippi. To require these trains to stop at all at Magnolia seems unnecessary and unreasonable. If the accommodations afforded are not adequate, why single out the through mail trains and seek to convert them into local trains? Why not, under existing statutes, or statutes to be enacted, exert the police power of the State to improve the service by having better equipments on the three passenger trains now in use from Magnolia, and, if they are insufficient, by requiring other trains? The citizens of Magnolia are entitled to sufficient accommodations, and the State has the power to enforce the right; but when such right can be enforced otherwise, it is unreasonable to do so by interfering with the rights of others equally entitled to the protection of the law."

We submit that if the court will construe the cases of *Cleveland, C. C. & St. L. R. Co. vs. Illinois*, and *Mississippi R. R. Commission vs. Illinois Central R. Co., supra*, in connection with the long line of other cases we have cited in support of our contention, the correctness of that contention will clearly appear. This is precisely what was done in the closely analogous case of *Wabash, St. Louis & Pacific R. Co. vs. Illinois*, 118 U. S., 557 (30 L. ed., 244), and the result was exactly as we here contend for.

Such a rule works no hardship to any one, indeed it is the only one assuring absolute justice to all. The interstate tourist traveler and the mails of the United States can go on untrammeled, while, on the other hand, the State can amply care for

local needs. In case of the necessity for a train beyond State lines, it is clear that Congress is the only power able to afford relief, for no argument is necessary to show that at best a State can only force a railroad to run a train to the boundary line. So we submit that such is the law of this court, and that it is necessary and proper that it should be so.

C. The Question of Providing Adequate Local Facilities not Having Been an Issue in the Original Petition of Latta to the Railroad Commission, and not Having Been Considered by Such Commission, Could the Inadequacy of Local Facilities be Used as an Excuse to Violate the Interstate Commerce Rights of the Railroad Company?

(Assignment 5.)

Examination of the record will show that the citizens of Latta at first asked for *better accommodations,* so that they could get back home at night from the South (Statement of Case, *supra,* Paragraph 13, printed Transcript of Record, p. 22), and *that this was provided by changing the schedule of the Latta Branch train to connect at Pee Dee Junction with the night local passenger from Florence to Wilmington.* (Letter of W. N. Royall, General Superintendent. Statement of Case, *supra,* Paragraph 13, printed Transcript of Record, p. 64). As the Record shows, *this was all they ever asked in the way of better local facilities.* However, they soon afterwards did make a demand that trains Nos. 32 and 35 stop at Latta, *but stated no reason therefor.* (Statement of Case, *supra,* Paragraph 14, printed Transcript of Record, pp. 61, 62.)

The only thing the Commission could do was to consider the character of trains Nos. 32 and 35 in connection with the request to stop them, and, after taking all these things into consideration, advise whether in their opinion it would be proper to stop such trains. The Commission had no authority to make a final order requiring any train to stop at a particular station, for the reason that it could not make any order whose reasonableness would not be open to judicial review, as the exercise of such a power would be a denial to the railroad company of due process of law and the equal protection of the laws guaranteed by the Constitution of the United States. And for the same

reason the Railroad Commission—an administrative board—could not have judicially determined whether facilities at Latta were adequate, even if that question had been before it.

But, even if the Commissioners could have decided the issue as to local facilities at Latta, the fact remains that they did not do so by a trial directed to that end. They merely said that "after personal inspection of the situation at Latta, and the demand of said citizens for these accommodations," it appeared to them that sufficient accommodations were not furnished, and it would not be unreasonable to stop trains Nos. 32 and 35. (Statement of Case, Paragraph 16.)

It will be noted that the Commissioners do not pretend they had a trial at Latta on the question of providing adequate local facilities, but denominate their proceeding a *"personal inspection of the situation."* Now, we most respectfully submit that a mere personal inspection and the demand of certain citizens are not sufficient to determine that a railroad must stop its interstate commerce trains at a certain station. In the running of these interstate trains the railroad company enjoys valuable rights, and these are not to be taken away by any mere personal inspection or demand that they be interfered with. The due process clause of the Fourteenth Amendment to the Constitution of the United States demands and requires a proper trial before a duly constituted court, and, even if the Commission was such a court and could have afforded such a trial, the fact remains that it, according to its own admission, did not do so; and this being true, it necessarily failed legally and judicially to determine that accommodations at Latta were not sufficient. But, under the authorities cited in the first part of this Brief, it is clear that the Railroad Commission is not a court, and, therefore, was without power to afford a trial on the question of adequacy of local facilities.

Since the Commission neither judicially determined nor had authority judicially to determine whether local facilities were already adequate at Latta, manifestly it could not violate the interstate commerce rights of the railroad company. For we take it that, even conceding that it is proper for a State to stop a train engaged wholly in interstate commerce in order to supply adequate local accommodations, *an order requiring such a train to stop cannot be made until it has been judicially determined that sufficient accommodations have not been furnished. C., C. C. & St. Louis R. Co. vs. Illinois*, 177 U. S., 514 (44 L. ed., 868); *Mississippi R. R. Commission vs. Illinois Cen-*

tral R. Co., decided December 3, 1906. The inquiry must be directed to the end of determining judicially whether facilities are adequate and whether certain trains can reasonably be made to provide them in case they are not adequate, and this is a judicial question requiring due process of law for its determination. *Chicago, etc., R. Co. vs. Minnesota*, 134 U. S., 418 (33 L. ed., 970). No judicial determination of the question having been made in this case, the interstate commerce trains of the defendant could not be legally interfered with, even if we concede that it is within the power of a State to require local accommodations, not otherwise adequate, to be supplied by trains engaged wholly in interstate commerce.

But our contention is that the decisions of this court, when properly construed, are to the effect that a State can make no order requiring trains engaged wholly in interstate commerce to stop at stations to serve local needs, whether local accommodations are sufficient or not, and if such be the law, certainly they could not legally be required to stop when it had not been judicially determined whether local accommodations were adequate or not. (*Authorities under Part II, subd. B., supra.*)

D. The Question of the Railroad Company's Providing Adequate Local Facilities not Being Before the Supreme Court of South Carolina, Except by Way of Affirmative Defense, Urged by the Defendant Railroad Company in Its Answer on the Merits, and it Appearing that Said Supreme Court of South Carolina, After Appointing Its Referee to Take the Testimony, Refused to Consider Such Testimony, When a Consideration of Such Testimony Would Have Shown Adequate Local Facilities Were Provided, Could the Failure to Provide Such Facilities be Made the Ground of Stopping Interstate Commerce Trains Nos. 32 and 35 at Latta?

(Assignment 6.)

It should be borne in mind that this case was first heard in the Supreme Court of South Carolina on a demurrer to the complaint, and upon such hearing that court rendered an interlocutory opinion overruling the demurrer with leave to defendant to answer. Prior to the decision on the demurrer, all the proceedings were had before the Railroad Commission, which,

as we saw in the preceding section of our argument, could not consider the question of adequacy of local accommodations at Latta, since no such issue was raised in the petition of the citizens of Latta upon which the railroad company was called to a conference, nor could it have been judicially determined if it had been raised, as the Commission was not a court.

After the court filed its opinion overruling the demurrer, the defendant served its answer in which, after repeating the grounds taken by the demurrer, it alleged, *inter alia,* as an affirmative defense, that sufficient accommodations were already furnished the citizens of Latta, and those residing along the Latta Branch railroad. (Answer, printed Transcript of Record, p. 18). Thus for the first time the question of adequate local facilities became an issue in the case, despite what is said to the contrary in Paragraph 3 of the complaint, or anywhere else in the Record. Since the answer alleged sufficiency of local facilities as a complete defense to the attempt to stop interstate trains Nos. 32 and 35 at Latta, it necessarily became the duty of the court—the case being no longer before the Railroad Commission—to determine whether the facilities were really sufficient. In order that the court might determine this question and the additional question as to whether it would be reasonable to stop these trains under all the circumstances, the Attorney-General of the State appeared before the court and moved that a referee be appointed to take the testimony on all issues involved and report it to the court. The motion was granted, and the referee took and reported the testimony as required. (Statement of Case, Paragraph 20.)

When the matter came on for a hearing, the court refused to consider the testimony as reported by the referee, held the finding of the Commission final, and awarded a writ of mandamus to enforce it. (Statement of Case, Paragraphs 21-23.) From this statement of the proceedings before the court, it is readily seen that the adequacy of facilities at Latta has never been passed upon by any judicial tribunal, although urged by defendant as a defense to the attempted interference with its interstate commerce trains. Not only did the court refuse to determine whether the facilities were adequate, but, in addition, to say whether it would be reasonable under all the circumstances to require trains of the character of Nos. 32 and 35 to stop at such a place as Latta. The Railroad Commission could not do this, because these were judicial questions requiring determination by a duly constituted court, and it could not be

said, with any show of reason, that the Railroad Commission was a court. Since the Commission did not assume, and if it had so assumed, was without power, to pass judicially on these questions; and since the Supreme Court absolutely refused to pass judicially upon them; we contend that the enforcement of the order of the Commission by a writ of mandamus deprives defendant railroad of its property without due process of law, and denies to it the equal protection of the laws. That this conclusion is inevitable we think is demonstrated beyond question by the authorities referred to in Part I of this argument.

If the court had decided that the facilities were inadequate, and that requiring the trains to stop, in view of all the circumstances, would be reasonable, quite different questions would be before this court. But we must treat the case as we find it; and this being true, the questions arise (1), has defendant railroad been deprived of its property without due process of law and been denied the equal protection of the laws? and (2), were the facilities at Latta adequate? The first of these questions we disposed of in the first part of our argument, but the second we shall now discuss. We have endeavored to show that be facilities adequate or inadequate, trains engaged wholly in interstate transportation and carriage of the mails cannot be interfered with; hence we pass that over. But be that as it may, we shall endeavor to show to your Honors, that the testimony the South Carolina Supreme Court refused to consider shows, beyond question, that the facilities at Latta were amply sufficient for all local requirements; and if such be the fact, the writ of mandamus was erroneously issued.

That this court has authority to examine this question is clear from the recent decision in *Mississippi R. Commission vs. Illinois Central R. Co., supra*, where the language of the court is as follows:

"In reviewing statutes of this nature, and also orders made by a State Railroad Commission, it frequently becomes necessary to examine the facts upon which they rest, and to determine from such examination whether there has been an unconstitutional exercise of power and an illegal interference by the State or its Commission with the interstate commerce of the railroad. Whether there has or has not been is a question of law arising from the facts."

To the same effect is *A. C. L. R. Co., vs. N. C. Corp. Com.*, Sup. Ct. U. S., April 29, 1907.

This being true, what do we find here? We have already endeavored to show that in their petition the people of Latta did not ask for better local accommodations, but simply *demanded* that trains Nos. 32 and 35 be required to stop at Latta. It should also be borne in mind that the original request of these people for better accommodations from the South at night was duly complied with by the railroad company by changing the schedule of the Latta Branch trains so as to connect at Pee Dee with the local passenger from Florence to Wilmington. (Printed Transcript of Record, pp. 21-22, 64); and even after this crusade was begun to stop trains 32 and 35, the railroad offered to make further changes in the local schedules if better accommodations were what the Latta people were seeking. (Printed Transcript of Record, p. 68.) But, so determined were they to have these two trains stopped, that they completely ignored this suggestion. This would seem to prove conclusively that it was not a desire for better local accommodations, but rather for the privilege of enjoying all the advantages of their rival, Dillon, that prompted these people to act as they did. But, be that as it may, the answer raised the issues of sufficient local accommodations and the peculiar character of these two trains as carriers of interstate travelers and the United States mails; and upon both of these issues the referee took testimony only to have the South Carolina Supreme Court refuse to consider it. We contend that a consideration of this testimony would have shown (1), that accommodations at Latta were adequate, and, (2), that it would be unreasonable to require such trains as these to make the stops.

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1. As to Adequacy of Accommodations.

The testimony of Mr. W. J. Craig, defendant's General Passenger Agent, is so full on this subject that we take the liberty of quoting from it at length: (Printed Transcript of Record, pp. 98-101, 103-104.)

"Q. Mr. Craig, do you know the passenger accommodations that are afforded the people at Clio and Latta, S. C.?

A. Yes, sir.

Q. I would be glad, Mr. Craig, if you would locate yourself mentally at Clio, S. C., in the early morning, and trace the train service from that point during the day. That is to say, I wish you would take it up this way: I wish you would take the

first passenger train out of Clio, S. C., and follow that train during the entire day, giving the arrival and departure of that train from any point and show the connections that can be made by that train at every point where it stops to take on and put off passengers?

A. I have prepared here, for my special reference, a crude map of the schedule from Clio to all points served by the Atlantic Coast Line, and I have drawn in red the train service showing the A. M. departures from Clio, and in blue the P. M. departures from Clio. Leaving Clio at 7:00 A. M., arrive at Latta 7:45 A. M. (I am following the red line now), arrive at Dillon 8:05 A. M., arrive at Pee Dee 8:55 A. M., arrive at Florence 9:35, arrive at Charleston 1:20 P. M., arrive at Savannah 6:45 P. M.; leaving Savannah 6:55 P. M., arrive at Waycross 10:00 P. M., arrive at Montgomery at 8:05 A. M., serving intermediate points. At Montgomery prompt connection is made in the Union Depot for New Orleans, Pensacola, Mobile, and Texas points, and also for points on the Mobile and Ohio Railroad, and the L. & N. north of Montgomery. I have given the arrival at Waycross at 10:00 P. M., leaving Waycross at 10:00 P. M., arrive at Tifton at 11:45 A. M., where through service is available to Atlanta and the West. The train arrives at Albany, Ga., at 2:15 A. M.

Leaving Pee Dee at 10:22 A. M., connection is made at Chadbourn for Conway, arriving there at 1:50 P. M. Continuing, arrive at Wilmington at 1:20 P. M., connection being made at this point for Newbern and intermediate points. I have quoted the arrival at Florence at 9:35 A. M., leaving Florence 9:45 A. M., arrive at Darlington 10:35 A. M., at Hartsville 1:45 P. M., arrive at Cheraw 11:29 A. M., Wadesboro 12:30 noon.

Leaving Latta at 10:30 A. M., arrive at Fayetteville 12:25 noon, where connection is made for Sanford and points on the Southern Railway and through Greensboro and beyond; also for points between Fayetteville and Wilmington. Continuing, this train arrives at Richmond 7:45 P. M., Washington 11:40 P. M., Baltimore 1:43 A. M., Philadelphia 4:25 A. M., New York 7:15 A. M.

Leaving Darlington at 10:30 A. M., arrive at Bennettsville 12:45 noon, and going on, arrive at Fayetteville at 7:15.

Q. Mr. Craig, I would like for you to give the connections made in the same way at various points by the train leaving Clio in the afternoon?

A. Leaving Clio at 4:30 P. M., arrive at Latta 6:05 P. M., arrive Pee Dee 8:05 P. M., arrive Florence 7:55 P. M., arrive Sumter 9:30 P. M., arrive at Columbia 10:55 P. M.

Leaving Florence at 8:15 P. M., arrive at Darlington 8:45,

Bennettsville 9:40 P. M., Gibson 10:30 P. M., arrive at Hartsville 9:30 P. M.

Leaving Pee Dee at 8:37 P. M., arrive at Wilmington 11:45 P. M.; leaving Florence at 8:25 P. M., arrive at Charleston at 11:40 P. M., Savannah 2:40 A. M., Waycross 6:05 A. M., Jacksonville at 8:40, serving intermediate points, arriving at Port Tampa 7:25 P. M., arrive at St. Petersburg, Fla., serving intermediate points, at 9:35 P. M., arrive at Miami, Fla., serving intermediate points, at 7:20 P. M. Connection is also afforded from Union Station at Jacksonville for all points on the Seaboard Air Line in the State of Florida. Continuing the service from Waycross at 6:35 A. M., arrive at Montgomery 6:15 P. M., serving intermediate points. At Montgomery the same connections are afforded at Union Depot for New Orleans, Texas, Mobile, and points on the L. & N. Railroad north and south of Montgomery on the Mobile and Ohio Railroad.

Parties from Clio and Latta can also avail themselves by train No. 32 for Fayetteville, Wilson, Rocky Mount, Richmond, Washington, Baltimore, Philadelphia, and New York, by taking the schedule shown at Florence and boarding train No. 32 at Florence; train No. 32 leaves Florence at 8:00 P. M., arrives at Richmond at 4:07 A. M., Washington 7:54 A. M., Baltimore 9:09 A. M., West Philadelphia 11:22 A. M., New York at 2:00 P. M.

Q. Is it not a fact that in addition to the connections you have described on the afternoon, leaving Clio and going to Florence, S. C., that after the arrival of train No. 35 at Florence, connection can be made for all points South and West via Charleston, Savannah, and Augusta, leaving Florence at about 4:00 o'clock A. M.?

A. Yes, sir.

Q. Is it not a fact, Mr. Craig, that the only one connection that is not made either in the morning or afternoon by the train you have described is the train which leaves Florence at 8:00 for Columbia, S. C.?

A. That train only runs to Sumter, but it affords connection at Sumter.

Q. Is or not that the only train that the two trains you have described do not make connection with?

A. Yes, sir.

Q. What additional expenses are passengers going North put to if on leaving Latta they prefer going North on No. 32 rather than by No. 40?

A. Leaving Clio or Latta in the afternoon, connection is afforded at Florence with train No. 32. The additional cost would be $1.42 above what the rate from Latta to New York

would be; in other words, parties can go from Latta to Florence and board train No. 32 at an additional cost of only $1.42 above the price of a ticket from Latta to New York. The following connections are afforded to Clio taking the noon arrival, leaving New York at 9:25 A. M., Philadelphia 11:55 A. M., Baltimore 2:12 P. M., Washington 3:25 P. M., Richmond 7:25 P. M., arrive at Dillon 3:05 A. M.

Parties can leave here, arriving at Latta at 11:15 A. M., Clio 12:45 noon; leaving Wilmington at 6:00 A. M., arrive at Pee Dee 9:05 A. M., arrive at Latta at 10:30 A. M., and Clio at 12:45 noon.

Leaving Port Tampa at 8:25 A. M., Jacksonville at 8:05 P. M., Waycross at 10:10 P. M., Savannah at 1:35 A. M., Charleston at 6:15 A. M., Lanes 8:05 A. M., Florence 9:45 A. M., and arrive at Latta 12:45 noon.

Connection is made at Jacksonville with the above train from Fort Meyers, Fla., St. Petersburg, Fla., and from all points on the Seaboard Air Line in that State.

Leaving Brunswick at 4:10, connection is also made with this through train at Waycross. Leaving Albany at 2:00 P. M., connection is also afforded at Waycross with this through train.

Leaving Montgomery at 6:50 A. M., where connection is made from all points in Texas, Louisiana, Mobile, and Pensacola and points to the east and west thereof, arrive at Waycross at 6:05 P. M., connecting with this through train 40, arrive at Clio at 12:45 M. Leaving Columbia at 6:45 A. M., Sumter at 8:10, arriving at Clio 12:45. Leaving Gibson at 6:00 A. M., Bennettsville at 7:05 A. M., Hartsville at 7:05 A. M., Darlington 7:50 A .M., you reach Clio at 12:45 M.

For the P. M. arrival at Clio 10:05 P. M., the following connections are reported: Leaving Port Tampa, Fla., at 7:25 P. M., Fort Meyers 2:45 P. M., you reach Jacksonville at 7:55 A. M. Leaving Jacksonville at 8:50 A. M., Brunswick at 6:10 A. M., Savannah at 1:05 P. M., Charleston at 5:20, you arrive at Florence at 7:50 P. M., connecting for Clio at 10:05 P. M.

Leaving Columbia at 4:55 P. M., where connection is made with through train from Greenville, S. C., and intermediate points, and with all points on the Southern Railway north of Columbia, you reach Clio at 10:05 P. M.

Leaving Augusta at 2:25 P. M., where connection is made with through train via Atlanta from all points West, you reach Clio at 10:05 P. M., serving intermediate points like Denmark, Orangeburg, Sumter, etc.

Leaving Newbern, N. C., at 9:10 A. M., Wilmington at 3:45 P. M., where connection is afforded to all points north of Wilmington, you arrive at Clio at 10:05 P. M.

Leaving Conway at 2:50 P. M., you reach Clio at 10:05 P. M.; leaving Wadesboro at 4:10 P. M., Cheraw at 5:10 P. M., Darlington 6:24 P. M., Hartsville 4:15 P. M., arrival is made at Clio at 10:05 P. M.

Leaving New York at 9:25 P. M., Philadelphia 12:15 at night, Baltimore 2:37 A. M., Washington 4:30 A. M., Richmond at 9:05 A. M., and intermediate points, arrive at Clio at 10:05 P. M.

Leaving Albany, Ga., at 2:15 A. M., connection is afforded with train No. 32, which would provide for arrival at Clio at 10:00 P. M. It is impossible for me to give all the connections that are afforded by these trains at intermediate points. For instance, at Richmond, with diverging lines at Columbia and Savannah and Charleston, and the same may be said at other junction points where connections are afforded.

Q. Mr. Craig, is your general testimony on this subject of connection shown on these two maps you have prepared?

A. Yes, sir; there has been just one mistake, which you pointed out to me that I have not shown, and that is that Bennettsville connection, which I could put in, and that Conway connection, which I have overlooked.

Defendant introduces maps, which are marked Exhibits "A" and "B."

Q. In describing these connections that are afforded to Clio, S. C., are not all the connections you have described also afforded Latta, S. C.?

A. Yes, sir.

Q. Do you know the last census population of Latta, S. C.?

A. Yes, sir; I have it taken from the United States census, a copy of which I have. *The population, according to the census of 1900 was 453.*

Q. What was the population of Clio?

A. 508.

Q. What is the population of intermediate points between Clio and Latta?

A. The only point shown is Dunbar, 115 people, the United States census report showing that the other points are less than 50 population, and are, therefore, not given.

Q. What is the census population of Kingstree, S. C.?

A. 700 people.

Q. How many passenger trains a day in all directions afford to the people of Latta, S. C., an opportunity of going off by boarding a train?

A. *Eleven.*

Q. The following trains arrive at Latta from Clio: At 7 A. M., 6:05, from all points South, 10:30 A. M., from Dillon 7:50 A. M., Pee Dee and points beyond 9:35 A. M., and 9:05 P. M.

The following trains depart from Latta: For Clio 11:15 A. M., and 9:18 P. M., 7:01 P. M., for Wilmington and Points South and West; 8:30 A. M., Pee Dee and points beyond, 7:40 P. M., for Pee Dee and points beyond. In addition to which there are two local freight trains provided with passenger service, leaving Latta at 9:00 A. M., for Fayetteville and intermediate points, and at 7:01 P. M., for Florence and intermediate points.

Q. What is the census population of Marion, S. C.?

A. In 1900, 1,831.

Q. Isn't it a fact that the only accommodation afforded at Marion, S. C., is a local passenger train each way twice a day?

A. There is only a double daily service at Marion.

Q. Mr. Craig, from the standpoint of an expert in your line, what would you say after the passenger accommodations afforded at Latta, S. C., as compared with other smaller points?

Objected to; first, because it has not been shown that Mr. Craig is an expert; second, that it is not a matter of expert testimony, and the witness should be confined to a statement of facts leaving the matter of the efficiency of the service to be determined by the court.

Q. What road are you General Passenger Agent of?

A. The Atlantic Coast Line Railroad.

Q. What experience did you have in that department of railroad work before you came to the Atlantic Coast Line?

A. I have been in the general freight and passenger office for about twenty-one (21) years.

Q. How long have you been with the Atlantic Coast Line?

A. I have been here in this position for over three years.

Q. Now please go on and answer that question that I asked you?

A. I think the service at Latta is ample to meet all the conditions of travel.

Q. As compared with other smaller points?

A. I think it enjoys superior transportation facilities over similarly located points.

Q. As compared with Marion, S. C.?

A. Is has better passenger accommodations.

Q. As compared with Kingstree, S. C.?

Plaintiff's counsel objects to this line of examination, on the ground that it calls for the opinion of the witness.

A. It has better passenger conditions. It has more frequent train service than Kingstree.

Q. Isn't it a fact that that would hardly apply over the entire system?

A. That is a hard question to answer.

Q. Considering the passenger accommodations at Latta, S. C., isn't it a fact that the passenger facilities at Latta are better

than at points similarly located of the same size and even larger points?

A. It has undoubtedly. I have before me here a statement prepared of all the branch service on our system, and from that statement the service is undoubtedly as good as the best, and better than a large majority of them."

This testimony is undisputed, so it must be taken as true. In the first place, therefore, it clearly appears that, according to the census, Latta and Clio, taken together, have less than one thousand inhabitants, and that only one small station is mention on the entire Latta Branch Railroad. This shows that the great density of population of these communities exists only in the vivid imaginations of the parties dwelling there. Keeping this fact in mind, what does the undisputed testimony show as to the facilities furnished? It appears that eleven passenger trains, besides two freight trains a day, afford the people of Latta an opportunity to travel where they please. At 10:30 A. M., train No. 40, a through express train from Florida to New York, equipped with full complement of day coaches and Pullman sleepers, arrives at Latta and affords the citizens of Latta and Clio ample opportunity to come from and go to all points served by the Atlantic Coast Line Railroad in the South and West and the North and the East. (See Statement of Case, Paragraphs 10 and 12.) At 7:01 P. M., train No. 39, which is the same train going South as No. 40 going North, arrives at Latta and affords similar advantages as No. 40, to all parties coming from the North and East and those desiring to go to the South and West. (Statement of Case, Paragraphs 10 and 12.) These trains were designed primarily to accommodate any interstate travel that there might be from places of the size and importance of Latta, and the testimony abundantly shows that they are amply sufficient for this purpose. It requires no argument to show this court that citizens of an agricultural community like Latta, as a general rule, do very little interstate traveling; and, therefore, two such trains abundantly supply their needs. Of course, there is an occasional traveler from Latta and Clio to New York and the North, but these could more than be accommodated by train No. 40; and the same might be said of the occasional traveler to Florida and train No. 39. If these few interstate travelers—and we submit they must be few from so sparsely settled a country devoted exclusively to agriculture —can be amply taken care of by two trains run expressly for

this purpose, then it would be unreasonable to ask the railroad company to convert its through trains into locals to supply a need that did not exist. Besides, if the few interstate travelers from Latta and Clio must have a trip on trains 32 and 35, they can either drive from Latta to Dillon, which is but a few miles distant, or else go to Florence at trifling expense, where connection can be made with these trains.

The testimony further shows that the people of Clio and Latta are afforded daily, and, in most cases, double daily, connections to all points both within and without the State of South Carolina. Thus to Charleston and points beyond there is a double daily service, and the same is true of Wilmington. In fact, the only possible advantage that could be afforded by stopping train No. 32 would be to allow an occasional traveler bound for the North to board it at Latta, for the reason that all local needs are already amply supplied by a train from the South at night. If, however, train 32 were ordered to make this stop, other stations would immediately demand such a privilege, with the result that it would be converted into a local, thus seriously impairing its interstate business in order to suit the whims of a community already supplied with all the conveniences its patronage warranted. So far as stopping No. 35 is concerned, it appears from the testimony that by getting up at 3 o'clock in the morning a passenger from Latta would be able to get to Columbia by midday, provided he underwent a wait at both Florence and Sumter; whereas he could have left Latta the evening before and gone through to Columbia without change.

So far as Clio is concerned, it appears that that town enjoys the unusual advantage of a double daily passenger service on a branch line of railroad with connections at Latta for all points. And such a service is afforded this little town, even though its operation brings an actual loss to the railroad company. (Printed Transcript of Record, p. 117.) Surely a community of no more importance could not require a further loss merely to suit the whims and fancies of some of its citizens?

Not only has Latta eleven passenger trains a day, affording connection to all parts of the country, but, in being so provided, it enjoys privileges far above those of neighboring towns of much more importance. For example, it is shown in testimony that Marion, the county seat of the county in which Latta is situated, and a town of vastly more consequence, has only four local passenger trains a day, and the same is true of Kingstree,

the county seat of the adjoining County of Williamsburg. In addition to this, the uncontradicted testimony of General Superintendent of Transportation Borden *was to the effect that, taking the travel of the past ten years as a basis, the facilities furnished at Latta were amply sufficient to take care of all the local travel from that point.* (Printed Transcript of Record, p. 113.) If this be true—and it must be so held, as it is nowhere disputed—it requires no argument to show to this court the loss and hardship the railroad company would be subjected to by making its fast trains into locals; and, therefore, the order was improper.

So far we have referred exclusively to the testimony of defendant's witnesses, but that offered by plaintiff strengthens rather than weakens our conclusions. The burden of the testimony of the witnesses, J. J. Bethea, Thacker, Smith, R. J. Dew, Sellers, J. S. Bethea, and J. S. Dew, is that they are not furnished the great privilege and convenience of getting up shortly after midnight to take train No. 35 at Latta, spending the remainder of the night in a waiting room at Sumter, and at 9:30 A. M. that day go on to Columbia, where they may make connection with the Southern Railroad for the up-country. By leaving Latta at 7:01 o'clock in the evening they would have the advantage of a continuous trip to Columbia, where the same connections would be made with the Southern next day as on the morning trip. They all complain that they would have to pay a hotel bill in Columbia if they went at night, because of lack of connections, but the Atlantic Coast Line Railroad Company is not responsible for this, as it does its full duty by taking all passengers offered to the terminus of its line in Columbia, where the Southern fails to make the connections desired by these travelers from Latta and Clio. Several other witnesses complain about the failure to make connections at Sandford, N. C., entirely overlooking the fact that the fault lies with the Southern Railroad again; and Mr. Henry does not like it because he cannot go to Weldon or Rocky Mount and make connection for Norfolk, though he admits that he can make closer connection at both of these places by taking No. 40 at Latta at 10:30 A. M.

From an inspection of plaintiff's testimony taken at Latta, it will be observed that there was not even an attempt to prove the allegation of the complaint that inadequate conveniences were furnished the people of Latta. Taking the testimony of Mr. J. J. Bethea, plaintiff's principal witness—and no other witness

denies his testimony—we ascertain that early in the morning of each day a train leaves Clio, S. C., and goes to Latta, from Latta goes to Dillon, from Dillon it returns to Latta, and from Latta goes to Pee Dee, S. C., a junctional point on Atlantic Coast Line Railroad, arriving at Pee Dee in the morning. At Latta passengers from Clio and Latta are furnished a connection on a through train for all the points North, with through sleeping cars to New York. At Pee Dee passengers from both Clio and Latta make connection with trains for every point served by the Atlantic Coast Line Railroad Company, except that passengers cannot by that train have a continuous schedule to Columbia, S. C. This train at Pee Dee receiving passengers from all points served by the Atlantic Coast Line, returns to Latta in the morning, continuing its course to Clio. Returning from Clio in the afternoon, it makes its second trip to Latta and goes to Pee Dee, making at that point connection with trains going to all points served by the Atlantic Coast Line. Returning, this train, receiving passengers from all points, goes to Latta and Clio. Clio is located at the end of a branch road and has the unusual advantage of a double daily service and connection with the main line at Latta. Latta in turn, being at the junctional point, gets the benefit of this service, and, in addition, has a freight train serving the passenger traffic running North and South once a day. In addition to this provision, for local travel, Latta, being located on the main line, is given the advantage of a daily service North and South of a through train between all points in Florida and New York, and the local train described, in constantly leaving and returning to Clio through Latta, makes connection with these trains. If the schedules of trains at such places as Marion, Kingstree, Lake City, and other places located on the Atlantic Coast Line Railroad, much larger and more important than Latta, are considered, it will be ascertained that so far as Latta is concerned, by comparison with the other places mentioned, it is a most favored point. This is not a mere assertion, but is a fact easily recognized by a most casual inspection of the testimony of the plaintiffs. While this admitted testimony of the plaintiffs shows that the conveniences furnished to the people of Latta and Clio are not only entirely adequate, but altogether unusual even for such points so fortunately located, we will find that there was no other testimony given by the witnesses at Latta, S. C., at all applicable to the issues involved, relating as it does to the equipment of the ticket offices at Latta and Clio and the

equipment of the service, as to character of the cars, such as furnishing a tin cup for drinking water, and unclean cars, inasmuch as such things, ifproved, could have no bearing upon the question of stopping interstate commerce trains, because such testimony, giving rise to these collateral questions, could only be considered by the Railroad Commission on petitions or complaints looking to their correction as specific evils wholly unconnected with the question of stopping the interstate commerce trains at Latta. In the testimony of the witnesses taken at Latta, some of the witnesses have suggested the advisability of the Atlantic Coast Line Railroad Company running its trains to Columbia so that connection will be immediately made, without any lay-over at Columbia, for points served by the Southern Railway out of Columbia. It might, with propriety, be suggested that when the Atlantic Coast Line Railroad Company gives a through connection from Latta to Columbia—which is as far as its road goes in that direction—its duty there ends; and it might further, with propriety, be suggested that the question of starting out a train from Latta to connect with the Southern Railway, simply to furnish the people of Latta this convenience, should be referred to some other case, in which the corresponding duty of the Southern Railway should be called into question. Clearly such testimony does not enlighten the present contention that the Atlantic Coast Line Railroad Company should stop its trains 32 and 35 at Latta. It cannot be contended that these last-mentioned trains should be stopped at Latta simply to give to the people residing there the privilege of starting for Columbia at 3 o'clock in the morning and spending a part of the night at Sumter, which they would be compelled to do, when it is a fact that the people of Latta can leave Latta for Columbia in the afternoon and have the convenience of a through trip to Columbia.

The entire result of the testimony is that the people of Latta, in considering the passenger service that the Atlantic Coast Line gives in furnishing them a double daily connection with all points North and South, they have discovered that the Southern Railway does not make connection with the Coast Line at Columbia, and that this should be corrected by giving them the privilege of starting for Columbia at 3 o'clock in the morning and spending a part of the night in Sumter, at which point neither the Southern Railway nor Coast Line furnishes them with a continuous unbroken trip to the up-country.

On the day following the taking of testimony at Latta, the plaintiffs continued the taking of their testimony at Clio, and the testimony of the following witnesses residing at Clio was taken: J. C. Covington, H. J. Bennett, C. S. Evans, A. L. Calhoun, J. Strauss, and S. Weill. The testimony of these witnesses was all of the same character. They recognized the agreeable fact that this town of Clio, located at the end of a branch line nineteen miles distant from Latta, was given a double daily passenger service to Latta and Pee Dee, where, joining with the main line, connection was afforded twice a day for all points served by the Atlantic Coast Line. It was admitted by these witnesses that when passengers from Clio desired to go North, connection was made daily at Latta with the morning train from Clio for all points North, and with the evening train for all points South. Failing entirely to furnish any proof as to inadequate accommodations by way of passenger service, they confined their testimony to immaterial points, such as a general criticism of the character of the passenger cars; which, if proved, is wholly immaterial to the present issue, and a subject the consideration of which should have been reserved for some other contention. In other words, such a want of accommodation, if it exists, could not be cured by stopping the interstate commerce trains at Latta, for it cannot be conceived that this result would improve the character of the passenger cars used between Clio and Latta. The distinguishing feature of the affirmative evidence given by the Clio witnesses was their very frank admission of the selfish character of their desire, if any such desire was expressed by them, that trains Nos. 32 and 35 should stop at Latta. These witnesses very frankly stated that the daily trains which served their purpose in making through connection North and South were first-class trains, provided with sleeping cars, and their only objection to these trains was that when they boarded them at Latta and started North or South, the railroad company was considerate enough to stop these trains at other points like Latta to afford the public like accommodations; in other words, they desired fast trains. They admitted the fact that if trains Nos. 32 and 35 stopped at Latta and similar points they would become just such trains as the two other trains in question. They further admitted that it was entirely unnecessary to have two such trains each way a day—that is, local trains, made such by stopping trains Nos. 32 and 35 at Latta and similar points—and undertook to solve the question by stating that it was their

desire that trains Nos. 32 and 35 should stop at Latta and should then stop at no other point. In other words, they expressed the desire that the Atlantic Coast Line Railroad Company should furnish the people of Clio and Latta every convenience for through and local travel, and, in addition, should stop its interstate commerce trains at Latta, but at no other point, so as to make the rights of the people at every other point less than and subservient to the convenience, desires, and demands of the people of Latta and Clio. The very frank expression of these witnesses at Clio certainly justifies the criticism that they are asking, not only for their own protection, but that the rights of others should receive a secondary consideration.

Such being the facts of the case, we submit that the facilities afforded at Latta were all the travel from that community would warrant.

In *C., C., C. & St. L. R. Co. vs. Illinois*, 177 U. S., 514 (44 L. ed., 868), eight local passenger trains a day were admitted by the demurrer to afford sufficient local accommodations; and in the recent case of *Mississippi R. Commission vs. Illinois Central R. Company*, where there was an attempt to stop two southbound interstate passenger and mail trains of the Illinois Central R. R. Co., the railroad company furnished three local southbound trains a day, and this court affirmed the holding of the Circuit Court of Appeals that the facilities were already adequate. That case is closely analogous to this for the reason that, just as here, it did not appear from the evidence that the trains that stopped at Magnolia going South were not sufficient for the travel, but the objection or complaint shown by the proof was that the trains were not well equipped, and that they left at inconvenient times. (See 138 Fed. Rep., 331.) So that we take it that the facts of the case at bar make it much stronger than the two just cited, and, if the accommodations were sufficient there, they must be here.

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2. As to the Character of Trains Nos. 32 and 35.

Not only did the defendant railroad prove that the facilities afforded were adequate, but, in addition, showed that trains Nos. 32 and 35 were of such a character that it would be unreasonable to convert them into locals. In Paragraphs 5 to 9, inclusive, of the Statement of the Case, *supra*, we have made a concise

statement of the character and operation of these trains, to which we refer your Honors rather than repeat it here. In addition to this statement, we may say that the undisputed testimony of defendant's witnesses showed that these trains, constituted as they were, were not adapted for local work; that they would lose their through patronage if made locals; that they would be run at a dead loss as locals, for the reason that there was not sufficient local patronage to require them, and the through patronage would be gone; that being made locals they would be operated at a loss, which would require their abandonment, and that if made locals the United States Government would take away the through mail contract and give it to a line not so hampered. The plaintiffs did not controvert this testimony, so it must be taken as true.

So that in the case at bar we have conclusive proof that the facilities were adequate, and additional proof that it would be most unreasonable to convert these trains into locals. Such being the facts, we earnestly submit that it was error to award a writ of mandamus to compel the defendant to stop these two trains at Latta; and the more especially in view of the further fact that the Supreme Court of South Carolina refused to pass judicially on the facts of the case and awarded its writ without deciding anything whatever as to the real merits of the controversy.

E. Is it Only After All Local Conditions Have Been Met That Railroads Doing an Interstate Commerce Business Have the Right to Adopt Special Provisions for Through Traffic?

(Assignment 10.)

It is contended, however, that through lines of railroad running across many States have no right to adopt special provisions for through traffic until they have adequately provided for all local needs. It is true, in *Cleveland, C., C. & St. L. R. Co. vs. Illinois*, 177 U. S., 514 (44 L. ed., 872), this court said "that, after all local conditions have been adequately met, railways have the right to adopt special provisions for through traffic, and legislative interference therewith is unreasonable," but this statement must be considered with reference to the peculiar facts of that case. As we have before shown, in that case the

demurrer admitted that local facilities were adequate, hence this statement of the court was merely to the effect that such being the fact, there was no necessity to interfere with through trains. The court did not say, and we submit did not intend to say, that a railroad company having a line extending through several States has no right to provide for the interstate traffic among such States until it has furnished all the local trains each of these several States may desire. Neither do we see that such a doctrine has been laid down in *Lake Shore & M. S. R. Co. vs. Ohio,* 173 U. S., 285 (43 L. ed., 702); for that case referred solely to the right of a State to require local trains to be run.

If it is the primary duty of the railroad company to provide for local accommodations, and if it is the secondary duty of the railroad company to provide for the needs of interstate traffic, it cannot be contended but that these two duties, denominated primary and secondary, are of equal importance in the one case to the local traveling public, and in the other case, to the interstate traveling public; and that it is equally the duty of the railroad company to provide for both, even though one be termed primary and the other secondary. Indeed, If such a doctrine were carried to its legitimate conclusion, it would necessarily result in holding that Congress is absolutely powerless to require a railroad extending across several States to run a train for the interstate transportation of passengers until each State deemed it had sufficient accommodations, although under the long line of decisions of this court, such transportation is a subject of interstate commerce of national character, and consequently within the exclusive jurisdiction of Congress. The doctrine here contended for by the defendant in error shows the limit to which a State will go in the attempt to regulate interstate commerce, and we submit that it affords another argument in support of our contention that the law of this court is—or should be—that the local accommodations, when shown to be inadequate, must be provided by local trains run under State authority, and not by interference with through trains engaged wholly in the interstate transportation of passengers.

In the case at bar, the Atlantic Coast Line Railroad Company is *a corporation created by the laws of the State of Virginia* (Answer, printed Transcript of Record, p. 18), and as such operates a continuous line of railroad from Port Tampa, Fla., to Richmond, Va. Now the contention here is that this through line of railroad cannot operate a through train between its ter-

mini until it has first provided adequately for the State of South Carolina. We submit that this road is equally tributary to Virginia, North Carolina, South Carolina, Georgia, and Florida; and, therefore, that South Carolina has no authority to interfere with the rights of Virginia and Florida, North Carolina and Georgia. A through passenger from Richmond to Port Tampa has just as much right to demand an uninterrupted journey as the local traveler from Latta to ask that he be allowed to go to Columbia at 3 o'clock in the morning rather than take the ample provision afforded him at 7 o'clock in the evening. We submit, therefore, that even applying the rule that railroads must primarily provide adequate accommodations for those to whom they are directly tributary, so far as the Atlantic Coast Line is concerned, this duty would require it to provide these facilities to Virginia, North Carolina, Georgia, and Florida; and that while South Carolina could compel local conditions to be met, it could not do so by infringing the rights of the other States concerned. The authorities submitted above on the power of a State to interfere with trains engaged wholly in the transportation of interstate passengers, in our view, render further comment on this subject unnecessary.

F. Could the Writ of Mandamus be Framed so as to Require Trains Nos. 32 and 35 to Stop at Latta, With the Alternative Provision That the Duty to Provide Adequate Facilities Might be Discharged by Furnishing Facilities Substantially the Same as Those That Would be Furnished by Stopping Trains Nos. 32 and 35, When This Alternative Requirement was Undefined, Unwarranted and Based Upon a Question not Decided by the Court?

(Assignment 11.)

At the close of its second opinion the South Carolina Supreme Court used this language:

"The court has reached the conclusion that the writ of mandamus should be issued; but in order that the respondent may have the opportunity of discharging its primary duty in the premises without stopping trains Nos. 32 and 35 on flag, *the writ will be so framed as to confer upon the railroad company*

the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains Nos. 32 and 35 on flag." (Italics added.)

By inserting this alternative provision, the court endeavored to avoid interfering with interstate commerce trains; but, in our view, this alternative provision is totally ineffective to accomplish any such result.

We may ask what facilities would be substantially the same? To suit all parties, they must be defined. They cannot be defined in this case, because the issue has never been before the court, and has never been defined by the Railroad Commission. The only way in which the question has ever been raised is by way of affirmative defense, and the South Carolina court has not considered this defense. It will be recalled that the sole question before the Railroad Commission at the hearing at Latta was as to stopping trains Nos. 32 and 35, and not as to furnishing local facilities. The answer raised the question of adequacy of local facilities, as an affirmative defense, and on this the referee took testimony, which the court refused to consider. So that *whether Latta had sufficient facilities was never passed upon,* and we submit that *this was absolutely necessary in order to give any validity whatever to this alternative provision of the writ.* To require a given locality to be supplied with accommodations in the first instance is a legislative function, but to pass finally upon the adequacy of facilities already furnished and the reasonableness of requiring others rests with the judicial branch of the government. The effect of the order of the Commission, as construed by the court, was not to legislate that better accommodations should be furnished at Latta, but to pass judicially upon the reasonableness of stopping trains Nos. 32 and 35 at that place; and in so doing, as we have shown, it transcended its authority, and its action is illegal as depriving the railroad company of its property without due process of law. When the questions of adequacy of local accommodations already furnished, and the reasonableness of requiring others came before the court, it refused to render judicial judgment thereon, and this again denied to the railroad company due process of law. Since the judicial questions of adequacy of facilities already furnished and the reasonableness of requiring others have never been determined, manifestly to give any force whatever to the alternative provision of the writ, would be depriving the railroad of its property without due process of law, and denying to it the equal protection of the laws guaranteed

by the Constitution of the United States. *Authorities under Part I, supra.*

But there is another reason equally strong for holding this alternative provision of the writ to be beyond the power of the court to make. Whether the facilities being furnished at Latta were adequate, and whether it would be reasonable to provide others by stopping trains Nos. 32 and 35, were judicial questions and could be finally determined by a court alone. On the other hand, requiring facilities to be furnished at Latta and prescribing what they should be, were legislative functions, and, therefore, beyond the pale of judicial authority. The Legislature of the State or some of its duly authorized agencies alone could pass upon such questions. Here the court, without deciding from the testimony whether facilities were adequate, but taking as final and conclusive the order of the Commission, which was without power to make such an order, and which, as a matter of fact, could not pass upon the adequacy of facilities in the proceedings before it as an original proposition by this alternative provision of the writ, orders the defendant railroad company "to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains Nos. 32 and 35 on flag." (Second opinion of court, printed Transcript of Record, p. 125; writ of mandamus, printed Transcript of Record, p. 140.) We submit that this order to furnish facilities substantially the same as would be afforded by stopping trains Nos. 32 and 35 is a legislative and not a judicial command, and being such, is void under the decisions of this court.

The decision in the *Express Cases*, 117 U. S., 1 (29 L. ed., 803), is directly applicable. There the court, "having found that the railroad company should furnish the express company with facilities for business, had to define what those facilities must be; and *it did so by declaring that they should be furnished to the same extent and upon the same trains that the company accorded to itself or to any other company engaged in conducting an express business in its line.*" (Italics added.) Such requirement was held by this court to be void, on the ground that the order was legislative and not judicial, and, therefore, beyond the power of the court to make. We take it that the court had no more authority to require facilities substantially the same as those which would be furnished by stopping trains Nos. 32 and 35 than it would have to order a certain tariff of rates fixed by it to be adopted; and that the latter

could not be done is conclusively established by the decisions of this court. Without quotation, we refer to the following authorities as settling the principle:

Reagan vs. Farmers Loan & Trust Co., 154 U. S., 362 (38 L. ed., 1014).
St. Louis & S. F. R. Co. vs. Gill, 156 U. S., 649 (29 L. ed., 572).
Interstate Com. Commission vs. Cincinnati, etc., R. Co., 167 U. S., 479, 500 (42 L. ed., 253).
Chicago, etc., R. Co. vs. Tompkins, 176 U. S., 173 (44 L. ed., 420).
2 *Elliott on R. R.'s*, Section 691.

So, as we take it, the alternative provision of the writ is without effect, for the reason (1), that the facilities required to be furnished have never been defined in any proceeding directed to that end; (2), that the necessity for any additional facilities has never been determined as a basis for such provision; and, (3), that the requiring to be provided facilities substantially the same as those which would be furnished by trains Nos. 32 and 35 was the discharge of a legislative function, and, therefore, not within the scope of judicial authority. The object of the action was not to determine whether facilities were adequate at Latta, and in no sense has the railroad company had a hearing on this matter, which could only be determined in a proper proceeding to that end directed.

For these reasons we contend that this alternative provision of the writ is of no effect, and that the writ must be construed as though it merely required trains Nos. 32 and 35 to stop at Latta.

We, therefore, respectfully submit that for the reasons here stated, the judgment of the Supreme Court of South Carolina awarding the writ of mandamus was erroneous, and should be reversed.

We realize that our Brief in this case is somewhat lengthy, but we ask the indulgence of the court for having attempted to make an exhaustive examination of the authorities on a question of such vital moment to the Atlantic Coast Line Railroad Company as an interstate carrier of passengers from Florida

and the West Indies to Washington, New York, and other Northern and Eastern points.

Respectfully submitted,

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APPENDIX A.

The Railroad Commission Law of South Carolina, as Found in Volume I of the Code of Laws of South Carolina, Revision of 1902.

SECTION 2063. There shall be three Railroad Commissioners elected in accordance with the provisions hereafter contained; that is to say: they shall be elected by the present General Assembly for the term of two years, beginning with the first day of January, 1893. At the expiration of said terms they shall be succeeded by their successors in office, who shall have been elected at the next general State election. The Commissioners of Election for the several counties in the State shall at each general election herein provided for conduct the election of the Commissioners as is conducted the election of other State officers other than Governor and Lieutenant-Governor. The term of office of the Commissioners to be elected at the general election of 1894 shall be for two, four, and six years, respectively, the term of each Commissioner to be determined by lot, in the presence of the Governor. At the expiration of said terms, respectively, they shall each be succeeded by his successor in office, who shall have been elected at the general elction next preceding the date of said expiration. Said Commissioners shall take the oath of office provided by the Constitution and laws of this State for State officers, and shall not, jointly or severally, or in any way, be the holder or holders of any railroad stock or bond. The Governor shall have the power to fill vacancies in the office of Commissioner until the successor in such office for a full term or an unexpired term, as the case may be, shall have been elected at the next ensuing general election and

qualified. The salary of each Commissioner shall be twenty-one hundred dollars per annum, to be paid from the Treasury of the State.

SECTION 2064. A majority of said Commissioners shall constitute a quorum for the transaction of all business pertaining to their office. The Commissioners to be elected under the terms of this article shall be elected from the State at large: *Provided,* That any male citizen of this State above the age of twenty-five years shall be eligible to election to the position of Railroad Commissioner.

SECTION 2065. The said Commissioners shall be furnished with an office, necessary furniture and stationery, and may employ a secretary or clerk at a salary of twelve hundred dollars per annum, at the expense of the State. The office of said Commissioners shall be kept in Columbia, and all sums of money authorized to be paid by this article out of the State Treasury shall be paid only on the warrant of the Comptroller-General: *Provided,* That the total sum to be expended by said Commissioners for office rent, furniture, and stationery shall in no case exceed the sum of five hundred dollars ($500), or so much thereof as may be necessary, per annum.

SECTION 2066. The expenses of the Commissioners, including salaries and the salary of their secretary or clerk, shall be borne by the several corporations owning or operating railroads, telegraph and express companies in this State, according to their gross income proportioned to the number of miles in this State, to be apportioned by the Comptroller-General of the State, who, on or before the first day of October in each and every year, shall assess upon each of said corporations its just proportion of such expenses in proportion to its gross income for the current year ending on the thirtieth day of June preceding that on which the assessment is made; and the said assessment shall be charged up against the said corporations, respectively, under the order and direction of the Comptroller-General, and shall be collected by the several County Treasurers in the manner provided by law for the collection of taxes from such corporation, and shall be paid by the said County Treasurers as collected into the Treasury of the State, in like manner as other taxes collected by them for the State. The Commissioners and their secretary shall be transported free of charge, when in the performance of the duties of their office concerning railroads, over all railroads and railroad trains in this State, and they may take with them experts or other agents whose service they

may deem to be temporarily of importance, and they shall in like manner be transported free of charge.

SECTION 2067. The Commissioners shall have the general supervision of all railroads and railways, express and telegraph lines in this State operated by steam, and shall examine the same and keep themselves informed as to their condition and the manner in which they are operated, with reference to the security and accommodation of the public and the compliance of the several corporations with the provisions of their charters and the laws of the State; and to enforce the provisions of this chapter; and the provisions of this chapter shall apply to all railroads and railways, and to the corporations, trustees, receivers, or others owning or operating the same.

SECTION 2068. Whenever, in the judgment of the Railroad Commissioners, it shall appear that any such corporation has violated any law, or neglected in any respect or particular, to comply with the terms of its charter, or with the provisions of any of the laws of the State, especially in regard to the connections with other railroads, the rates of toll, and the time schedule, they shall give notice thereof in writing to such corporation, and if the violation or neglect is continued after such notice, the Commissioners shall make application to a Circuit judge, or a judge thereof in vacation, for an injunction to restrain the company complained of from further continuing to violate the law or the terms of its charter, or for a writ of mandamus, as hereinafter provided in Section 2119.

SECTION 2069. Whenever, in the judgment of the Railroad Commissioners, it shall appear that repairs are necessary upon any such railroad, or that any addition to the rolling stock, or any enlargement of, or improvement in, the stations or station houses, or any modification in the rates of fare for transporting freight or passengers, or any change in the mode of operating the road and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, they shall give information in writing to the corporation of the improvements and changes which they adjudge to be proper; and if the said company shall fail, within sixty days, to adopt the suggestions of said Commissioners, they shall take such legal proceedings as they may deem expedient, and shall have authority to call upon the Attorney-General to institute and conduct such proceedings.

SECTION 2070. Upon the complaint and application of the Mayor and Aldermen or Council of any city, town or County

Board of Commissioners of any county within which any part of any such railroad is located, it shall be the duty of the Railroad Commissioners to make an examination of the conditions and operation thereof. Before proceeding to make such examination in accordance with such application, said Commissioners shall give to the applicants and the railroad corporations reasonable notice, in writing, of the time and place of entering upon the same. If upon such examination it shall appear to the Commissioners that the complaint alleged by the applicant is well founded, they shall so adjudge, and shall inform the corporation operating such railroad of their adjudication, in the same manner as is provided in Section 2068 of this chapter; and the company failing for sixty days after such notice to remove the cause of such complaint, they shall make report thereof to the General Assembly for such action as it may deem expedient; or if there be necessity for prompt action, they may take such legal proceedings as may be proper, and the Attorney-General shall institute and conduct such proceedings.

SECTION 2071. The Railroad Commissioners shall investigate the causes of any accident on a railroad resulting in loss of life, and of any accident not so resulting, which, in their judgment, shall require investigation.

SECTION 2072. Every railroad corporation shall, at all times on request, furnish the Railroad Commissioners any information required by them concerning the condition, management, and operation of its railroads, and particularly with copies of time tables, and also with the rates of transporting freight and passengers upon its road and other roads with which its business is connected.

SECTION 2073. No request or advice of the Railroad Commissioners shall have the effect to impair, in any manner or degree, the legal duties and obligations of any railroad corporation or its liability for the consequence of its acts, or of the neglect or mismanagement of any of its agents or servants.

SECTION 2074. The Commissioners shall make an annual report to the Legislature of their official acts, including such statements, facts and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the State; and such suggestions as to the general railroad policy of the State, or as to any part thereof, or as to the condition, affairs or conduct of any of the railroad corporations, as may seem to them appropriate, with a special report of all accidents and the causes thereof for the pre-

ceding year. And they shall also recommend such legislation as in their judgment may be necessary to secure just and reasonable rates for the transportation of passengers and freights and for the prevention of unjust discrimination.

SECTION 2075. The Commissioners shall require the annual reports to be made by railroad companies in manner and form and at the time provided for herein, and shall be authorized to require reports to be made of such other matters as they may deem expedient; and they may, from time to time, make such changes as they may deem proper in the form of report herein prescribed, giving the corporations one year's notice of any such changes or additions as require any alterations in the method or form of keeping their accounts; and the Commissioners shall, on or before the first day of June in each year, furnish to the several railroads blank forms of such reports. When the report received from any corporation is defective, or probably erroneous, the Commissioners shall notify the corporation to amend the same within fifteen days. The Commissioners shall prepare such tables and abstracts of all the returns they shall deem expedient, and their annual report shall be transmitted to the Governor of the State on or before the second Monday in November in each year, to be laid before the Legislature. The originals of the report or reports, as amended, subscribed, and sworn to by the officers of the corporation, shall be preserved in the office of the Commissioners.

SECTION 2076. All contracts and agreements between railroad companies doing business in this State as to rates of freight and passenger tariffs, shall be submitted to said Commissioners for inspection and correction, that it may be seen whether or not they are a violation of the law or of the provisions of the Constitution of this chapter, or of the rules and regulations of said Commissioners; and all arrangements and agreements whatever as to the division of earnings of any kind by competing railroad companies doing business in this State, shall be submitted to said Commissioners for inspection and approval, in so far as they affect rules and regulations made by said Commissioners to secure to all persons doing business with said companies just and reasonable rates of freight and passenger tariff, and so far as they are affected by any of the provisions contained in this chapter for securing to all persons just, equal and reasonable facilities for the transportation of freight and passengers; and said Commissioners may make such rules and regulations as to such contracts and agreements

as may be then deemed necessary and proper; and any such agreements not approved by such Commissioners, or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers, shall be deemed, held and taken to be violations of this chapter, and shall be illegal and void.

If the said contracts, agreements, or arrangements shall, in the opinion of the Commissioners, in any way be in violation of any of the provisions of this chapter, the Commissioners shall forthwith notify the said railroad companies, in writing, of their objections thereto, specifying such objections; and if the said railroad companies shall fail or neglect, within five days after such notice, to amend and alter such contract, agreement, or arrangement, in a manner satisfactory to the Commissioners, the Commissioners shall thereupon call upon the Attorney-General to institute and conduct such legal proceedings as may be necessary to enforce the penalties prescribed in this chapter for such violation of its provisions.

SECTION 2077. Said Railroad Commissioners, in making any examination for the purpose of obtaining information pursuant to this chapter, shall have the power to issue subpoenas for the attendance of witnesses by such rules as they may prescribe, and said witnesses shall receive from the State Treasury for such attendance one dollar per day and five cents per mile traveled by the nearest practical route in going to and returning from the place of meeting of said Commissioners, to be ordered paid by the Comptroller-General upon presentation of subpoenas sworn to by the witnesses as to the number of days served and miles traveled, before the clerk of said Commissioners, who is hereby authorized to administer oaths. In case any person shall wilfully fail or refuse to obey such subpoena, it shall be the duty of any Circuit judge of the Court of Common Pleas and General Sessions of any county, upon application of said Commissioners, to issue an attachment for such witness and compel him to attend before the Commissioners and give his testimony upon such matters as shall be lawfully required by such Commissioners; and said Circuit judge shall have power to punish for contempt, as in other cases, of refusal to obey the process or order of the court.

SECTION 2078. Every officer, agent, or employee of any railroad company who shall wilfully neglect or refuse to make and furnish any report required by the Commissioners as necessary to the purposes of this chapter, or who shall wilfully and unlawfully hinder, delay or obstruct said Commissioners in the dis-

charge of the duties imposed upon them, shall forfeit and pay a sum of not less than one hundred dollars, nor more than one thousand dollars, for each offense, to be recovered in any action in the name of the State as provided in Section 2117.

SECTION 2079. The Commissioners may make and propound to any of the railroad companies of this State any interrogatories additional to those contained in the schedule and report hereinbefore provided, which shall be answered by such companies in the same manner.

SECTION 2080. On the application in writing of a director or of any person or persons owning one-fiftieth part of the entire paid in capital stock of any corporation operating a railroad, or the bonds or other evidences or [of] indebtedness of such corporation equal in amount to one-fiftieth part of its paid in capital stock, the Railroad Commissioners shall make an examination into the books of said corporation.

SECTION 2081. The Railroad Commissioners shall further have, at all times, access to the list of stockholders of every corporation operating a railroad, and may, in their discretion, at any time, cause the same to be copied, in whole or in part, for their own information or for the information of persons owning stock in such corporation.

SECTION 2082. It shall be the duty of said Commissioners, when necessary, to investigate so much of the books and papers of all the railroad companies doing business in this State as they may think proper, to ascertain if the rules and regulations as aforesaid have been complied with, and to make personal visitations of railroad offices, stations, and other places of business, for the purpose of examinations and to make rules and regulations concerning such examinations, which rules and regulations shall be observed and obeyed as other rules and regulations as aforesaid; said Commissioners shall also have full power and authority to examine all agents and employees of said railroad companies and other persons under oath and otherwise, in order to procure the necessary information to make just and reasonable rates of freight and passenger tariffs, and to ascertain if such rules and regulations are observed or violated, and to make necessary and proper rules and regulations concerning such examinations, and which rules and regulations herein provided for shall be obeyed and enforced as all other rules and regulations provided for in this chapter. The powers herein conferred upon the Commissioners to fix passenger and freight rates, joint and several, are hereby delegated to

them by the General Assembly as fully as the General Assembly itself could exercise them; and in arriving at their conclusions and decisions as to what are just and reasonable rates, and in making examinations for such purpose, they shall have the powers conferred in Sections 2077, 2078, 2079, and 2080, for securing the attendance of witnesses, reports and testimony of officers, agents or employees of railroad companies, and for the production of books and papers; and for violation of the provisions of this section the same penalties are hereby imposed as are provided in said sections respectively; and such witnesses shall receive the compensation prescribed in Section 2077. Said passenger rates shall not exceed those allowed by Section 2165.

SECTION 2092. The Commissioners elected as hereinbefore provided shall, as provided in the next section of this chapter, make reasonable and just rates of freight and passenger tariffs, to be observed by all railroad companies doing business in this State on the railroads therein; but said passenger rates shall not exceed the maximum prescribed in Section 2165; they shall make reasonable and just rules and regulations to be observed by all railroad companies doing business in this State, as to charges to any and all points for the necessary hauling and delivery of all freights; shall make such just and reasonable rules and regulations as may be necessary for preventing unjust discrimination in the transportation of freight and passengers on the railroads in this State; shall have the power to make just and reasonable joint rates for all connecting roads doing business in this State, as to all traffic or business passing from one of said roads to another, and to require the making of such connection at intersecting points of the schedules of trains as the public convenience may in their judgment demand: *Provided, however*, That before applying joint rates to roads that are not under the management and control of one and the same company, the Commissioners shall give thirty days' notice to said roads of the joint rate contemplated, and of its division between said roads, and give hearing to roads desiring to object to the same; shall make reasonable and just rates of charges for use of railroad cars carrying any and all kinds of freight and passengers on said railroad, no matter by whom owned or carried, and shall make just and reasonable rules and regulations to be observed by said railroad companies or railroads, to prevent the giving or paying of any rebate or bonus, directly or indirectly, and from misleading or deceiving the public in any manner as to the real rates charged for freight and passengers:

Provided, That nothing in this chapter shall be taken as in any manner abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from or goes beyond the boundaries of the State, and on which freight less than local rates on any railroad carrying the same are charged by such railroad, but said railroad companies shall possess the same power and right to charge such rates for carrying such freights as they possessed before the passage of this chapter, and Commissioners shall have full power, by rules and regulations, to designate and fix the differences in rates of freight and passenger transportation to be allowed for shorter and longer distances on the same or different railroads, and to ascertain what shall be the limit of longer and shorter distances.

SECTION 2668. The said Railroad Commissioners are hereby authorized and required to make for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of just and reasonable rates of charges for transportation of passengers and freight and cars on each of said railroads, and said schedule shall, in suits brought against any such railroad corporations wherein is involved the charges of any such railroad corporation for the transportation of any passenger or freight or cars, or unjust discrimination in relation thereto, be deemed and taken in all of the courts of this State as sufficient evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers and freights and cars upon the railroads; and said Commissioners shall from time to time, and as often as circumstances may require, change and revise said schedule. When any schedule shall have been made or revised, it shall be the duty of all such railroad companies to post, at all their respective stations, a copy of said schedule for the protection of the people: *Provided*, That the schedules thus prepared shall not be taken as evidence as herein provided until schedules have been prepared and published as aforesaid for all the railroad companies now organized under the laws of this State, or that may be organized at the time of said publication. All such schedules purporting to be printed and published as aforesaid shall be received and held in all such suits as *prima facie* the schedules of said Commissioners without further proof that the production of the schedule desired to be used as evidence, with a certificate of the Railroad Commission that the same is a true copy of the schedule prepared by them for the railroad company or

corporation therein named, and that the same has been duly published as required by law: *Provided,* That thirty days' notice of any change or revision of the schedule of rates shall first be given to the railroad company to be affected thereby before the same shall go into effect.

Any railroad corporation which shall fail to post at any of its stations a copy of the schedule of rates as provided in this section, shall be liable to a penalty of one hundred dollars for each and every day in which it shall fail to post such schedule, to be recovered by any citizen who will sue therefor, one-half of such penalty to go to the State, the other half to the citizen suing for the same.

SECTION 2094. Power is hereby conferred on the Railroad Commission of South Carolina, and they are required to fix and prescribe a schedule of maximum rates and charges for storage of freight made and charged by railroad companies doing business in this State, and to fix at what time, after the reception of freight at place of destination, such charges of storage shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination, and residence of consignee, and such other facts as in their judgment should be considered in fixing the same.

All provisions of the Act creating said Railroad Commission, and Acts amendatory thereof, prescribing the procedure of said Commission in fixing freight and passenger tariffs, and hearing complaints of carriers and shippers, and of altering and amending said tariffs, shall apply to the subject of fixing and amending rates and charges for storage, as aforesaid.

SECTION 2116. If any railroad company doing business in this State, by its agents or employees, shall be guilty of a violation of the rules and regulations provided and prescribed by said Commissioners, and if, after due notice of such violation given to the principal officer thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation, as may be directed by said Commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offense of not less than one thousand dollars nor more than five thousand dollars, to be fixed by the presiding judge. An action for recovery of such penalty shall lie in any court in the State where such violation has occurred or wrong has been perpetrated, and shall be in the name of the State of South Carolina. The Commissioners shall

institute such action through the Attorney-General or any of the Solicitors of this State.

SECTION 2117. If any railroad company doing business in this State shall, in violation of any rule or regulation provided by the Commissioners aforesaid, inflict wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury in the county where the same is done, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in actions between individuals, except that in cases of wilful violation of law such railroad companies shall be liable to exemplary damages: *Provided*, That all suits under this chapter shall be brought within twelve months of the commission of the alleged wrong or injury.

SECTION 2119. If any railroad company shall neglect or refuse to comply with the provisions of this chapter, or with the rules and regulations prescribed by said Commissioners within the limits of their authority, such company shall be subject to a writ of *mandamus*, to be issued by any justice of the Supreme Court, or Circuit judge, upon application of the Commissioners, or a majority of them, to require compliance with said laws or said rules and regulations, and failure to comply with said writ of *mandamus* shall be punishable as for contempt; and for any wilful violation of any of said laws, or failure to comply with the requirements of such rules or regulations, the court may award such costs and counsel fees, on the return of said writs, and after due deliberation thereon, as may be just.

SECTION 2169. The Railroad Commissioners of this State are hereby invested with authority to require all railroads at junctional points in this State to erect union or other depots for the convenience and accommodation of the public; and if any railroad company shall fail or refuse so to do when required by the said Railroad Commissioners, it shall forfeit and pay a sum of not less than five thousand dollars, to be recovered in an action in any county in this State where such violation has occurred, and shall be in the name of the State of South Carolina. The Commissioners shall institute such action through the Attorney-General or any of the Solicitors of the State.

ATLANTIC COAST LINE RAILROAD COMPANY *v.* WHARTON *et al.*, RAILROAD COMMISSIONERS OF THE STATE OF SOUTH CAROLINA.

ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

No. 36. Argued November 5, 1907.—Decided December 9, 1907.

Any exercise of state authority, whether made directly or through the instrumentality of a commission, which directly regulates interstate commerce is repugnant to the commerce clause of the Federal Constitution; and so held as to the stopping of interstate trains at stations within the State already adequately supplied with transportation facilities.

Whether an order stopping interstate trains at specified stations is a direct regulation of interstate commerce depends on the local facilities at those stations, and while the sufficiency of such facilities is not in itself a Federal question, it may be considered by this court for the purpose of determining whether the order does or does not regulate interstate commerce, and if, as in this case, the local facilities are adequate, the order is void.

Inability of fast interstate trains to make schedule, loss of patronage and compensation for carrying the mails, and the inability of such trains to pay expenses if additional stops are required are all matters to be considered in determining whether adequate facilities have been furnished to the stations at which the company is ordered by state authorities to stop such trains.

74 S. Car. 80, reversed.

THE railroad company, plaintiff in error, brings the case here to review a judgment of the Supreme Court of the State of

South Carolina, which granted a mandamus to compel the company to stop certain of its through trains running between Jersey City, New Jersey, and Tampa, Florida, at a station on its road called Latta, in the State of South Carolina, near the boundary line between that State and the State of North Carolina.

Upon a request filed with him by the Railroad Commission of South Carolina, the Attorney General of that State commenced these proceedings by filing a petition to obtain a mandamus directed to the company compelling it to stop trains 32 and 35 at the station mentioned, pursuant to the order made by the Railroad Commission, after a hearing had been had before it.

The company demurred to the petition, the demurrer was overruled and the company given leave to answer, which it did, setting up several defenses, among others averring that sufficient accommodations were already furnished to the citizens of Latta, and those residing along the Latta Branch Railroad; that the trains mentioned, 32 and 35, were interstate commerce trains, running between New York and Tampa, Florida, and intermediate cities, and the southbound trains were compelled to run at a high rate of speed in order to make connections with the steamers to Havana from Tampa, and so as to make the through trip as fast as possible; that the northbound trains were companion or return trains, making an equally fast schedule time; that to stop them at stations like Latta would result in rendering it impossible for them to make schedule time and they would have to be abandoned as through fast trains; that they carried the United States mail and their trains were made up very largely of through passengers; that there were two competitors for this through travel, and that it would be impossible to keep up the trains in competition with these other railroads if stops were to be made other than those absolutely necessary. The answer also averred that in addition to a number of passenger trains of local character daily, there was also furnished the citizens of Latta the con-

venience of a daily passenger train each way for through travel north and south other than trains 32 and 35, and it was averred that the order of the Railroad Commission of South Carolina was unreasonable and unnecessary, a direct burden upon interstate commerce, and therefore a violation of and in conflict with § 8 of Art. I of the Constitution of the United States, giving Congress the power to regulate commerce.

On the coming in of this answer an order was made referring all issues involved to a referee to take testimony thereon and report back as soon as convenient. Pursuant to such order evidence was taken before a referee and report made thereon to the Supreme Court, which decided that sufficient accommodations were not furnished to the citizens of Latta and along the Latta Branch Railroad by the plaintiff in error at its station in Latta; and the court thereupon made an order that the passenger trains 32 and 35 should stop when flagged at the Latta station, for the purpose of receiving and delivering passengers at that station, "with the alternative right on your part to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains Nos. 32 and 35 on flag."

The testimony upon which this order was made is in the record and is substantially uncontradicted. It appears from that testimony that Latta is a small station in the State of South Carolina, near the northern boundary of the State, and on the road of the plaintiff in error, having a population, according to the last United States Census, of 453. Clio is another small settlement in the same State, about twenty miles northwest of Latta, on what is termed the Latta Branch Railroad, having a population of 508, by the same census. Dunbar is a station between Latta and Clio, with a population according to the same census, of 115. The country back of these stations is said to be a somewhat thickly settled agricultural country. It is also said by witnesses for Latta that these places have increased somewhat in population since the last census.

In addition to several local trains passing through Latta

for stations along this road, or to and from Clio, there was one daily through train each way (Nos. 39 and 40), stopping at this station, and which carried passengers through to New York or Florida and intermediate stations, and they were equipped with first and second class cars, through Pullman sleepers, mail, express and baggage cars. The only objection to them was their want of speed; that they stopped so frequently they did not arrive at their destination as swiftly as trains 32 and 35. In addition, trains 32 and 35 could be boarded at Florence, a station on the same road, distant about 15 or 20 miles south from Latta, or at Dillon, a station about 7 miles from Latta. The objection made by the people of Latta to this mode of getting these trains was that if they were going north they rode south from Latta to Florence, and then boarded the train and went directly back over the same road from Florence to Latta, which they would not have to do if the train stopped at Latta. It also involved an additional cost of $1.42 above the price of a ticket from Latta to New York. If they preferred to take the train northbound at Dillon instead of Florence, then they had to drive from Latta to Dillon over what was described by a witness to be in winter "one of the worst roads that ever was made a road." It was also averred that by stopping the southbound train (No. 35) at Latta it could be there taken at 3 o'clock in the morning instead of going to Florence the night before and taking the train there at 4 o'clock A. M. the next day, and a close connection could also be made at Florence with Columbia (on a branch road), by taking train 35 at Latta at 3 A. M., so that a citizen could go to Columbia and return to Latta the same day, thus saving a hotel bill, which now had to be paid, as connections were so made that the journey could not be accomplished in one day. The people at Clio, and the other stations on the Latta Branch Railroad, were accommodated so that they could ride to Latta in time to have substantially the same conveniences in getting away from that station that the people living there had. The distance from Jersey City to Tampa is about twelve hundred miles, and the trains

32 and 35 are among the fastest and longest continuous trains in the whole country, exceeding the distance from New York to Chicago. These trains rank with the very best trains run anywhere. They are placed on the road for the convenience of through travel, and could not be profitably run if they were slower trains.

Mr. P. A. Willcox and *Mr. Frederic D. McKenney*, with whom *Mr. Alexander Hamilton*, *Mr. George B. Elliott*, *Mr. F. L. Willcox* and *Mr. Henry E. Davis* were on the brief, for plaintiff in error:

The State has no power or authority to interfere in other than police matters with fast mail and passenger trains engaged wholly in interstate commerce. *Henderson* v. *Mayor of New York*, 92 U. S. 259; *Hannibal &c. R. R. Co.* v. *Husen*, 95 U. S. 465; *Leisy* v. *Hardin*, 135 U. S. 100; *Walling* v. *Michigan*, 116 U. S. 446; *Robbins* v. *Shelby County*, 120 U. S. 489.

Even if adequate local railroad facilities are not furnished, a State has no power and authority to compel the furnishing of such facilities by requiring fast mail and passenger trains engaged wholly in interstate commerce to make the stops, but it can only compel additional local trains to be furnished. *Tiernan* v. *Rinker*, 102 U. S. 123; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196; *Wabash Railroad Co.* v. *Illinois*, 118 U. S. 557; *State Freight Tax Case*, 15 Wall. 232; *Welton* v. *Missouri*, 91 U. S. 275; *Brown* v. *Houston*, 114 U. S. 622; *Gilman* v. *Philadelphia*, 3 Wall. 713; *Mississippi Railroad Commission* v. *Illinois Central Railroad Co.*, 203 U. S. 335; *Hall* v. *DeCuir*, 95 U. S. 485. See also *Crandal* v. *Nevada*, 6 Wall. 35; *Hannibal &c. R. Co.* v. *Husen*, 95 U. S. 465; *Mobile County* v. *Kimball*, 102 U. S. 691; *Webber* v. *Virginia*, 103 U. S. 344; *Walling* v. *Michigan*, 116 U. S. 446; *Pickard* v. *Pullman Southern Car Co.*, 117 U. S. 23; *Wabash Railroad Co.* v. *Illinois*, 118 U. S. 557; *Robbins* v. *Shelby Taxing District*, 120 U. S. 489; *Bowman* v. *Chicago & Northwestern Railroad Co.*, 125 U. S. 465; *Covington & Cincinnati Bridge Co.*

v. *Kentucky*, 154 U. S. 204; *United States* v. *E. C. Knight Co.*, 156 U. S. 1.

The facilities provided were adequate and it would be unreasonable to require the company to convert these two fast interstate trains into local trains and to compel plaintiff in error to stop these two trains at Latta.

Mr. M. C. Woods, with whom *Mr. J. Fraser Lyon*, Attorney General of the State of South Carolina, was on the brief, for defendants in error:

The regulation of the accommodations afforded the traveling public is a police regulation. *Gladson* v. *Minnesota*, 193 U. S. 53; *Mississippi R. R. Commission* v. *Illinois Central R. R. Co.*, 203 U. S. 335.

The Supreme Court of South Carolina was warranted in deducing from the holdings of this court that the primary duty of even an interstate railroad is to its local territory, and the secondary duty is to interstate traffic. *Mississippi R. R. Commission* v. *Illinois Central R. R. Co.*, 203 U. S. 335; *Lake Shore Co.* v. *Ohio*, 173 U. S. 285; *C. C. C. & St. L. R. R. Co.* v. *Illinois*, 177 U. S. 514. *Illinois Central R. R.* v. *Illinois*, 163 U. S. 142, discussed and distinguished.

The fact at issue having been determined by a tribunal of competent jurisdiction from which no appeal was taken, the Supreme Court of South Carolina would have been warranted in granting a peremptory writ of mandamus, as prayed for in the complaint, this being one of the instances in which this court has held that state authority may stop interstate trains.

The Supreme Court of South Carolina having granted to the railroad company the alternative of providing facilities substantially the same as those which would result from the stopping of trains 32 and 35 at Latta, the fault is with the plaintiff in error for failure to avail itself of this privilege, and therefore there has been no burden, direct or indirect, placed, by the court's action, upon interstate commerce.

MR. JUSTICE PECKHAM, after making the foregoing statement, delivered the opinion of the court.

The questions of the validity of state statutes and orders of state railroad commissions, directing the stoppage of through interstate trains, have frequently, within late years, been before this court. The last case is that of *Mississippi Railroad Commission* v. *Illinois Central Railroad Company*, 203 U. S. 335, where the prior cases are referred to. See also *Atlantic Coast &c.* v. *North Carolina Commission*, 206 U. S. 1.

That any exercise of state authority, in whatever form manifested, which directly regulates interstate commerce, is repugnant to the commerce clause of the Constitution is obvious. It hence arises that any command of a State, whether made directly or through the instrumentality of a railroad commission which orders, or the necessary effect of which is to order, the stopping of an interstate train at a named station or stations, if it directly regulates interstate commerce, is void.

It has been decided, however, that some orders which may cause the stoppage of interstate trains made by state authority may be valid if they do not directly regulate such commerce. *Lake Shore & M. S. R. Co.* v. *Ohio*, 173 U. S. 285. When, therefore, an order made under state authority to stop an interstate train is assailed because of its repugnancy to the interstate commerce clause, the question whether such order is void as a direct regulation of such commerce may be tested by considering the nature of the order, the character of the interstate commerce train to which it applies, and its necessary and direct effect upon the operation of such train. But the effect of the order as a direct regulation of interstate commerce may also be tested by considering the adequacy of the local facilities existing at the station or stations at which the interstate commerce train has been commanded to stop. True, inherently considered, whether there be adequate local facilities is not a Federal question, but in so far as the existence of such adequate local facilities is involved in the determination of the Federal

question of whether the order concerning an interstate train does or does not directly regulate interstate commerce, that question for such purpose is open and may be considered by us. 203 U. S., *supra*.

Without stopping to consider whether, in view of the character of the trains to which the order before us related, it would not result that the order complained of was a direct regulation of interstate commerce, and testing the subject by the local facilities at the station at which the trains were ordered to stop, we think the railroad company in this case has furnished such reasonable accommodations to the people at Latta as it can be fairly and properly called upon to give, and the order to stop these trains is, therefore, not a valid one.

The term "adequate or reasonable facilities" is not in its nature capable of exact definition. It is a relative expression, and has to be considered as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodations asked for, and to all other facts which would have a bearing upon the question of convenience and cost. In this case the company furnishes eleven different trains a day by which the people of Latta can leave that place, and among them are the daily through trains 39 and 40 for the South and North, respectively. That the inhabitants of a place demand greater facilities than they have is not at all conclusive as to the reasonableness of their demand for something more. Fault is found here with the character of some of the local trains, in that the appointments thereof are not up to a sufficiently high standard. It is true that included in these eleven trains were some which were a combination of freight and passenger, and others which only ran between Latta and Clio, and those are described as dirty and without proper closets and drinking tanks. These deficiencies are remediable by other means than the stoppage of the two trains in question. It is to be remembered that these two places, Latta and Clio, had together a population, by the

last census, of about a thousand. Two ordinary modern trains of the usual passenger coaches would comfortably transport the total population of these places. The number of people who are inconvenienced by the non-stoppage of these trains is, of course, comparatively quite small. One witness, who was in the hotel and general merchandise business at Latta, said that he sent a man or two every week to meet the fast train at Dillon, because they could not take it at Latta. Other witnesses said that the demand for those particular trains, 32 and 35, was quite frequent, as many as four people a week, while others said that the inconvenience of the through trains, 39 and 40, was on account of their not being fast trains, and hence were not so pleasant as the others, 32 and 35, and did not get them in to their destination as early as the latter trains did. The demand at Latta by people desiring to go to the termination of the road, either at New York or Tampa, would naturally be small. Some of the plaintiff's witnesses said that the demand for transportation at Latta was large, or quite large, and the inconvenience great, but a further examination of these witnesses showed that in specific details there was much lacking, and instances of inconvenience were really somewhat limited. But assuming that the number actually inconvenienced by the want of fast trains was "*quite large*," as said by some witnesses, it is perfectly evident the number would be small compared with the inconvenience of the much larger number of through passengers resulting from the stoppage of these trains at Latta and other similar stations in the State.

To stop these trains at Latta, and other stations like it, which could bring equally strong reasons for the stoppage of the trains at their stations, would wholly change the character of the trains, rendering them no better in regard to speed than the other trains, 39 and 40, and would result in the inability of what had been fast trains to make their schedule time, and a consequent loss of patronage, also the loss of compensation for carrying the mails, which would be withdrawn from them, and the end would be the withdrawal of the trains, because of

their inability to pay expenses. All these are matters entitled to consideration when the question of convenience and adequate facilities arises. There is no contradiction in the testimony that the company desires, so far as is fairly possible, to pay as much attention to the local demands as to the "through" claims.

Of course, it is not reasonable to suppose that the same facilities can be given to places of very small population that are supplied to their neighbors who live in much larger communities, and the defendants in error, it may be conceded, make no such demand. No one would assert that one daily train each way between New York and Philadelphia would furnish adequate facilities for the transportation of passengers. Twenty times that number of trains would be necessary, and yet one through train a day, each way, through so small a place as Latta to New York or Tampa would in all probability easily transport all the passengers desiring transportation between these places. Nevertheless, the fair needs of the locality for transportation to other local points must be considered and provided for. This, as we think, has been done.

Taking all the circumstances into consideration, as shown by uncontradicted evidence, we are of opinion that the judgment of the Supreme Court, directing a mandamus, was erroneous, and it is therefore reversed, and the case remanded to the Supreme Court of South Carolina for further proceedings therein not inconsistent with this opinion.

Reversed.